

Jean-Michel Lafleur  
Daniela Vintila *Editors*

# Migration and Social Protection in Europe and Beyond (Volume 1)

Comparing Access to Welfare Entitlements

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Jean-Michel Lafleur • Daniela Vintila  
Editors

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*Editors*

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Liege, Belgium  
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Jean-Michel Lafleur  
Daniela Vintila

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# Chapter 1

## Migration and Access to Welfare Benefits in the EU: The Interplay between Residence and Nationality



Daniela Vintila and Jean-Michel Lafleur

### 1.1 Introduction

Against a general background of increasing ethnic diversity, strong politicisation of migration, and overexposure of mobile individuals to social risks, the access of migrants and their offspring to welfare has become a key area of concern across European democracies (Ruhls and Palme 2018). Especially in the context of the recent financial crisis, high levels of unemployment and rapidly growing poverty rates have led to an increased demand on welfare systems. At the same time, many countries have undertaken reforms to curb social expenditure, cut the levels of social benefits and/or restrict the pool of potential beneficiaries of welfare entitlements. Examples in this regard are the reductions of budgetary expenditure on welfare, the cut/freeze of public sector pay or pensions, the increase of retirement age, or the reduction of unemployment benefits that several European Union (EU) Member States adopted in recent years.<sup>1</sup>

This specific socio-economic context has had serious implications on the number of individuals in need of social protection, with certain groups facing strong economic hardship. Migrants have been particularly affected by the recent economic

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<sup>1</sup> European Parliamentary Research Service (2013). *Social dimension of austerity measures: cases of 4 EU countries in receipt of financial assistance*. <http://www.europarl.europa.eu/ep/library/Social-dimension-of-austerity-measures.pdf>. Accessed 16 March 2020.

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crisis. According to the Eurostat migrant integration statistics<sup>2</sup>, half of non-EU citizens aged 20–64 years old residing in the EU in 2017 were considered at risk of poverty or social exclusion, compared to almost 28% among mobile EU citizens and 22% for non-mobile Europeans, respectively. Moreover, severe material deprivation was twice as high for third-country nationals (hereafter TCNs) when compared to EU citizens. Being in work does not necessarily act as a safety tool against poverty: in 2017, one in five foreigners working in the EU suffered from in-work poverty.<sup>3</sup> Of course, foreigners are not the exclusive targets of welfare policy reforms. Since the end of the twentieth century, EU Member States have indeed moved from passive income payments to active employment measures within social protection systems (Larsen 2005). This entails that all recipients of welfare entitlements—independently of their nationality—should now demonstrate some form of deservingness to receive such support.

In the context of the 2008 economic crisis and the growth in the arrival of asylum seekers around 2015, migrants' access to welfare has become increasingly salient in political discourses and at the societal level across the EU. According to the European Social Survey (ESS) data<sup>4</sup>, in 2016, more than 40% of ESS respondents considered that immigrants should be granted access to social rights only after they have worked and paid taxes for at least a year, whereas almost 30% supported the idea of granting social benefits only to naturalised migrants. These negative attitudes towards migrants' access to social protection have also been coupled by increasing politicisation of the effect of international migration on welfare systems (Schmidt et al. 2018). Consequently, several governments across Europe have put forward policy proposals aiming to limit migrants' eligibility for welfare benefits, whereas the argument of migrants as "abusers" or "unreasonable burden" for domestic social protection systems has often gained salience in political discourses (Lafleur and Stanek 2017; Ruhs and Palme 2018).

These recent socio-political dynamics have attracted an increasing scholarly interest in mobility-driven inequalities in access to social protection. While a rapidly growing body of scholarship has explored how the strong supranational framework of EU social security coordination affects intra-EU migrants' access to benefits (Martinsen 2005; Blauberger and Schmidt 2014; Kramer et al. 2018; Schmidt et al. 2018), little is known so far about the procedures, scope and extension of welfare entitlements for third-country nationals across the EU<sup>5</sup>. The knowledge on the array of social benefits that states make available to foreigners has also been predominantly restricted to case studies, with relatively little evidence of larger cross-national research (see Holzmann et al. 2005; Sainsbury 2006; Sabates-Wheeler and

<sup>2</sup> Eurostat (2019). *Migrant integration statistics- at risk of poverty and social exclusion* (data code: ilc\_peps05). [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migrant\\_integration\\_statistics\\_-\\_at\\_risk\\_of\\_poverty\\_and\\_social\\_exclusion](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migrant_integration_statistics_-_at_risk_of_poverty_and_social_exclusion). Accessed 16 March 2020.

<sup>3</sup> Eurostat (2019). See Footnote 2.

<sup>4</sup> ESS Round 8 Data (2016). [https://www.europeansocialsurvey.org/download.html?file=ESS8e02\\_1&y=2016](https://www.europeansocialsurvey.org/download.html?file=ESS8e02_1&y=2016). Accessed 16 March 2020.

<sup>5</sup> European Migration Network. (2014). *Migrant access to social security and healthcare: policies and practices*. Brussels: European Commission

Feldman 2011). Furthermore, since migrants' access to welfare has been traditionally studied from the perspective of receiving states, the critical role that sending states could play in protecting their nationals abroad against exposure to social risks is still understudied (Gamlen 2008; Lafleur 2013; Levitt et al. 2017).

This book is part of a series of three volumes (see also Lafleur and Vintila 2020a, b) that seek to address this research gap by providing a comprehensive cross-country comparison of social policies and programs targeting individuals in situation of international mobility. The book adopts a top-down analytical approach of the concept of migrant social protection, thus aiming to address the following questions: What type of access to social protection do migrants have across European countries? What kind of social benefits can they claim in their host countries and what type of welfare entitlements can they export from sending states? Do some migrant groups benefit from an easier formal access to such benefits than others? More precisely, what difference of treatment, if any, do EU Member States operate between EU migrants and third-country nationals beyond EU legislation? Lastly, are some countries more inclusive than others when it comes to social protection regimes for immigrants and emigrants alike?

To address these questions, this volume provides an in-depth analysis of social protection policies that EU Member States make accessible to national residents, non-national residents, and non-resident nationals. This differentiation allows us to capture different scenarios in which the interplay between nationality and residence could lead to inequalities in access to welfare. By bridging two bodies of literature – social policy research and migration studies – in an innovative way, this book aims to shed light on the changing nature of European welfare states as a result of the intensification and diversification of migration processes and trajectories. The book also addresses a major fragmentation in the academic scholarship on migrants' access to welfare. Social policy scholars frequently overlook the specific barriers that apply to migrants (nationality, duration of stay or prior contributions, family split across borders, etc.) upon trying to access welfare in home or host countries (Morissens and Sainsbury 2005). Similarly, they tend to overlook the fact that migrants often maintain relations with other welfare states in which they may have contributed in the past and/or from which they may still benefit from certain level of protection despite their physical absence. More recently, migration scholars have tried to overcome this difficulty by using the concept of transnational social protection to examine cross-border strategies by which migrants combine welfare entitlements from home/host countries with informal strategies (via transnational solidarity networks, migrant associations, etc.) to address their social protection needs or the needs of their relatives (Barglowski et al. 2015; Levitt et al. 2017; Serra Mingot and Mazzucato 2017; Lafleur and Vivas Romero 2018). In this process, scholars have stressed the need to examine the interactions between sending and receiving states' welfare configurations, but tended to use a case-studies approach that does not allow for systematic comparisons across states and/or different categories of mobile individuals.

In highlighting the multiple areas of state intervention towards migrant populations, we rely on a comparative research design that examines welfare entitlements

across EU27<sup>6</sup>. For each country, we systematically analyse migrants' access to benefits across five policy areas: health care, unemployment, old-age pensions, family benefits, and guaranteed minimum resources. Each case study maps the eligibility conditions for accessing welfare, by paying particular attention to the type of benefits that migrants can claim in host countries and/or export from home countries. The chapters included in this volume discuss the legislation regulating access to benefits in kind and cash, the legal definition of beneficiaries, the eligibility conditions applied for each benefit, and the period for which these benefits are granted. Each case study also provides an assessment of recent trends and directions in accessing welfare across the five policy areas of interest.

## 1.2 Challenging the Welfare State in an Era of International Mobility: What Type of Social Protection Regimes for Mobile Individuals?

Historically, welfare states have been designed as closed systems in which a group of people agree to share public goods (Walzer 1983). As citizenship has been the main criteria to define membership to this group, resident citizens in need were traditionally considered as an uncontested category of recipients of welfare entitlements. Yet, as noted by Freeman (1986), the coincidence between citizenship and the right to welfare has never been perfect. In the EU in particular, international mobility has not only challenged the principle of citizenship, but also that of territoriality according to which one had to be a resident to access social benefits. This trend has become visible since the end of World War II, with the development of the European integration process and the signature of bilateral labour agreements with third countries. The 1957 Rome Treaty<sup>7</sup>, in particular, acknowledged that, to convince people to move, the principle of free movement of workers had to be associated with some form of openness of welfare systems towards foreigners as well as increased coordination between states in the area of welfare. Whereas the development of EU citizenship, the rulings of the Court of Justice of the European Union and the adoption of the EU legislation on social security coordination<sup>8</sup> have

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<sup>6</sup>For an overview of migrants' access to social protection in the United Kingdom, see Lafleur and Vintila (2020b) in this series.

<sup>7</sup>See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0023>. Accessed 16 March 2020.

<sup>8</sup>See Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0883>- accessed 16 March 2020) and Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0987>- accessed 16 March 2020).

progressively expanded the access of mobile EU citizens to other categories than workers, states have tried to ensure that access to welfare remains primarily determined by a direct relation between individuals and Member States, rather than the EU (Maas 2007; Lafleur and Mescoli 2018).

In this chapter, we argue that migration to, within and from the EU is contesting the boundaries between insiders and outsiders in social policy legislations in two ways. First, by posing increasing pressures on host countries (especially those receiving large migration inflows) to extend access to social benefits beyond the closed group of nationality holders. This had led to discussions *vis-à-vis* the openness of post-national welfare state models (Bommes and Geddes 2000; Schmitt and Teney 2019) and the necessity to grant residence-based welfare rights to foreigners, especially those contributing to the social security system of their host countries via employment and taxes (see also Guiraudon 2002). Secondly, drawing on efficiency and fairness considerations, sending countries also started to witness increasing demands to ensure the (ex)portability of social benefits for their non-resident populations (Holzmann 2016). This includes not only their nationals abroad (under the rationale of a nationality-driven obligation for protecting the diaspora), but also foreigners who accumulated social security rights in these countries and later decided to return to their origin countries.

Nonetheless, these mobility-driven demands for exportability of social benefits and the recognition of non-national residents as eligible claimants of welfare assistance have quickly faced several counter-arguments. In the case of emigrants, their exclusion as beneficiaries of social benefits has been justified by the fact that they are no longer contributing to the welfare system of their home countries. Hence, when exportability is allowed, it generally covers only contributory benefits for those who comply with qualifying periods of prior contributions, thus justifying their prior economic commitment with their countries of nationality. When it comes to immigrants, the main debate has evolved around the idea that migration could represent a “burden” for the host welfare system, thus allegedly posing a threat especially for generous welfare regimes (Sainsbury 2006; Römer 2017; Ruhs and Palme 2018; Schmidt et al. 2018). This framing of migration and welfare relies on two assumptions. On the one hand, it assumes that welfare states that offer a wider range of easily accessible and generous benefits are necessarily more exposed to the potential fiscal impact of migration. This mainly derives from the “welfare magnet hypothesis” according to which generous welfare policies lead to increased immigration (Borjas 1998). Independently of the mixed evidence found in this regard (Giulietti 2014), the idea that migrants generally take out more from the welfare system than they put in via taxes is still well-entrenched in the public opinion across developed economies<sup>9</sup>. It also justifies policy-makers’ use of the so-called “no recourse to public funds for migrants” mantra (Deacon and Nita 2013), i.e. the idea that, to avoid further immigration, social policy reforms should limit

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<sup>9</sup>See ESS results, Round 7 (2014). <https://www.europeansocialsurvey.org/data/download.html?r=7>. Accessed 16 March 2020.

immigrants' access to social protection. Such perceptions, however, deny the existence of large differences between states in the way they deal with mobility in access to social benefits. In other words, it is not only the width of policies or the budget dedicated to them that matters, but also the specific eligibility conditions applied to mobile individuals when they try to access benefits. Moreover, this approach also overemphasizes the role of welfare states as social protection providers for residents (nationals and non-nationals), but neglects that, beyond the EU framework and bilateral/multilateral arrangements between sending and receiving states, important discrepancies may still exist in the way states respond to the social protection needs of their nationals abroad.

In parallel with these pressures for the redefinition of access to welfare at the domestic level, international mobility has also become an important driver for increasing social security cooperation between states (Avato et al. 2010). This cooperation mainly aims to regulate the types of social benefits that specific migrant groups can access due to their links to several national welfare systems. Yet, this type of cooperation can take different forms. On the one hand, the inclusiveness of domestic welfare regimes towards migrants is often conditioned by the existence of bilateral/multilateral social security agreements between home and host countries. These agreements sometimes put certain nationalities in a more privileged position to access welfare from their host countries. In the EU, despite the efforts to coordinate Member States' social security agreements with third countries, important variations still exist in the level of social security cooperation with the home country authorities of TCNs residing in EU countries (Eisele 2018). On the other hand, the inclusiveness of national welfare regimes has also been significantly shaped, in recent years, by the adoption of international norms recommending or guaranteeing portability of rights and/or equal treatment provisions. At the global level, examples include the International Labour Organization (ILO) Conventions and Recommendations<sup>10</sup> or the 1990 United Nations (UN) Convention on the Rights of Migrant Workers<sup>11</sup>. Regional agreements may also set rules regulating social security cooperation between groups of states. The most advanced scheme in this regard is the EU social security coordination. Together with the extensive jurisprudence of the Court of Justice of the EU, the EU coordination often guarantees that mobile EU citizens have an easier access to social benefits compared to TCNs, while also limiting states' margin of manoeuvre in freely regulating EU migrants' access to welfare (Seeleib-Kaiser and Pennings 2018; Schmidt et al. 2018).

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<sup>10</sup><https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang%2D%2Den/index.htm>. Accessed 16 March 2020.

<sup>11</sup><https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>. Accessed 16 March 2020.

### ***1.2.1 Existing Typologies of Immigrant Social Protection Regimes***

Until recently, there has been limited academic effort to map out migrants' access to social protection via large-N comparisons of different countries and groups of mobile individuals. Some scholars have approached this topic via small-N comparisons of selected countries (Bommes and Geddes 2000; Sabates-Wheeler and Koettl 2010; Sainsbury 2012). Others have focused only on the welfare entitlements of specific groups, such as immigrants (Sainsbury 2006; Römer 2017; Schmitt and Teney 2019), thus neglecting that migrants are often entitled to social rights also from their origin countries. Finally, some scholars have recently tried to classify the immigrant population worldwide based not only on their access to social protection in the host country, but also the portability of their rights across borders.

Holzmann et al. (2005) and later, Avato et al. (2010), in particular, built and refined a typology of four immigrant social protection regimes focusing on the host country legislation towards immigrants and bilateral/multilateral agreements concluded between home and host countries. Drawing on the original typology of Holzmann and colleagues, Avato et al. (2010) used existing databases on migration flows to determine the share of global migration covered by each regime. Their results demonstrate that few migrant groups (mainly those moving between wealthy nations of the North) are under the most favourable regime (Regime I) allowing them to access social benefits in the host country, while being able to export some benefits due to bilateral/multilateral arrangements. Most migrants find themselves in Regime II in which they can access the host welfare system without the possibility to totalize contribution periods in absence of bilateral agreements. Under Regime III (predominant in the Gulf countries), documented migrants cannot access the host country's welfare system, but specific and limited rights may be granted on an ad-hoc basis. Lastly, under Regime IV, undocumented migrants are very exposed to social risks as, in addition to their exclusion from welfare schemes, their exclusion from the formal labour market also prevents them from accessing work-related protection.

These efforts to classify immigrant social protection regimes represent a major step forward in merging migration research and social policy literature, especially since they recognize that—in line with socio-anthropological work on transnational migration—migrants do not cut links with the home country upon moving abroad. However, they also face several limitations that question their validity and applicability for all migrant groups across different home and host countries. Firstly, existing typologies do not actually detail the specific conditions under which migrants can access social benefits, as they mostly focus on the existence of a non-discrimination principle in accessing welfare. Yet, the mere existence of non-discriminatory regulations does not necessarily guarantee that migrants are well protected against vulnerability, nor that they can easily access welfare. Even when equal treatment provisions are in place (a scenario that would probably fall under Regime I according to previous typologies), migrants may still find it very hard to claim social benefits simply because the eligibility conditions applied for those benefits are quite restrictive, regardless of claimants' nationality. Thus, the existence of

a social security agreement *per se* and the equal treatment provision stipulated in it do not act as a guarantee that migrants will, indeed, have formal access to welfare, nor that benefit provisions adequately respond to their needs.

Secondly, existing typologies only provide a snapshot of access to specific benefits – especially pensions or health care in Holzmann et al. (2005), rather than operationalizing social protection in a more comprehensive manner. While it is true that accessing health care in the host country or having the possibility to export pensions could have a crucial impact on migrants' socio-economic vulnerabilities, these specific benefits only capture a limited picture of the whole array of welfare provisions that individuals may be entitled to when crossing the borders of different countries. As shown in this volume, migrants also have access to other traditional branches of social protection – including unemployment benefits, family-related benefits or social assistance services- that are equally important for preventing poverty and social risks. Consequently, the focus on a very narrow scope of welfare rights could lead to a rather distorted picture of the reality in terms of how well protected migrants are by national and international legislations. This becomes particularly evident when looking at old-age contributory pensions. As highlighted in the country chapters in this volume, unlike other social security branches, old-age pensions have subscribed to a trend of liberalization in terms of (ex)portability across social security systems, due to increased cooperation between states.

Thirdly, it is rather unclear how existing typologies have captured and aggregated different sub-categories of social benefits that migrants may have access to across specific policy areas. For instance, their measurement of health-related entitlements seems limited only to benefits in kind, while omitting the cash benefits granted in case of sickness. Similarly, their focus on pensions is exclusively defined within the framework of contributory old-age financial compensations, while neglecting that several countries also grant non-contributory allowances aiming to prevent poverty among the elderly population (see the examples of Austria, Belgium, Cyprus, Finland, Italy or Sweden in this volume). This seems particularly relevant since the specific conditions under which migrants can access non-contributory pensions as well as the overall scope, rationale and possibility of exportability of these pensions, are quite different when compared to the contributory ones.

Fourthly, by giving considerable weight to portability of benefits back to the home countries, previous typologies seem rather focused on a particular migrant group, namely those who have the intention to return after having lived abroad. Yet, not all migrants share this migration trajectory and for many of them, the option of return is not even a desirable one. For all those who find themselves in this scenario, the importance of (ex)portability of social benefits could fade away when compared to the relevance of their more immediate access to welfare in the host country (or when compared to their entitlement to social rights from the home country while residing abroad). Thus, apart from potentially overestimating the importance of return for migrants' life plans, these typologies might also underestimate the need for social protection that individuals actually have during their stay abroad (which in many cases, implies a quite long time span).

Additionally, previous typologies do not seem to address in detail how the general inclusiveness and development of welfare states could shape countries' behaviour towards emigrant and immigrant populations. As an illustration, migrants may receive limited social benefits in a particular country not because of their status of mobile individuals, but because that country offers limited benefits to all residents, including national citizens. At the opposite pole, when a regime is classified as generous towards migrants, this does not necessarily indicate that policy-makers are particularly concerned with addressing their social vulnerability. It can simply be a direct consequence of the inclusiveness of that regime towards all residents in general, regardless of their migration status. Lastly, in some cases, previous typologies also put forward some speculative assumptions that may lead to an oversimplification of social protection legislations. By way of example, Holzmann et al. (2005) assume that migrants originating from countries that have concluded a bilateral social security agreement (BSSA) with their host country fall under Regime I of advanced portability. Yet, the mere existence of bilateral agreements does not directly imply that they also cover all types of social benefits (see also Holzmann 2016 and several chapters in this volume); and the classification of these cases under Regime I may overestimate how inclusive and prevalent this regime is.

### ***1.2.2 Welfare Entitlements for Mobile Individuals: An Alternative Operationalization***

This book aims to address some of the limitations of previous studies on immigrant social protection regimes. To begin with, we adopt a comprehensive definition of social protection by covering a wide range of social benefits. Drawing on the definitions used by the European Commission's Mutual Information System of Social Protection (MISSOC)<sup>12</sup>, we provide an inventory of contributory and non-contributory benefits across five policy areas: unemployment (covering unemployment insurance and assistance benefits)<sup>13</sup>; old-age contributory and non-contributory pensions<sup>14</sup>; family-related benefits (maternity, paternity, parental and child benefits)<sup>15</sup>;

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<sup>12</sup> <http://ec.europa.eu/social/main.jsp?catId=815&langId=en>. Accessed 16 March 2020.

<sup>13</sup> Unemployment insurance benefits depend on a qualifying period of paid contributions, whereas unemployment assistance benefits are generally means-tested and granted to those who do not qualify (no longer qualify) for unemployment insurance benefits.

<sup>14</sup> Contributory old-age pensions are granted to individuals who have reached retirement age and/or sufficient years of contributions, whereas non-contributory pensions aim to prevent poverty and provide a safety net for the elderly population with little or no contribution history.

<sup>15</sup> Maternity and paternity benefits cover absence from work due to the birth of a child. Parental benefits usually start after the maternity/paternity benefits come to an end and they generally aim to cover parents' absence from work to take care of their children. Child/family benefits cover the costs incurred in bringing up children. Different eligibility conditions might apply for same-sex couples, registered partners, adoptive parents, etc.; but these specific situations are not discussed in this volume.

guaranteed minimum resources<sup>16</sup>; and health-related benefits (sickness benefits in kind and cash, and invalidity benefits)<sup>17</sup>. In doing so, we aim to capture cross-country variations in states' likelihood to extend certain benefits to migrants, with one key expectation being that contributory benefits (directly deriving from social security contributions) are more easily made available to mobile individuals when compared to non-contributory benefits.

Secondly, this book enquires about the conditions of access to social benefits for five different groups of potential beneficiaries: a) national residents; b) EU foreign residents; c) non-EU foreign residents; d) EU nationals residing abroad in other EU Member States and; e) EU nationals residing abroad in non-EU countries. Thus, we systematically compare the inclusiveness of social protection systems towards immigrants and emigrants alike; and we further assess how protected migrants are in home and host countries by comparing the benefits they are entitled to with the ones available for resident nationals. This comparison between groups aims to capture not only potential gaps in access to welfare between migrant and non-migrant populations; but it also aims to test states' predisposition towards a residence-based access to social benefits *versus* a nationality-driven rationale of access to welfare. In the case of non-national residents and non-resident nationals, we also distinguish between those originating from (or going to) EU Member States and third countries. This distinction draws from our expectation that the EU coordination framework may grant mobile EU citizens an easier access to benefits when compared to migrants going to or coming from non-EU countries, especially since most social benefits analysed here fall in the field of application of EU coordination regulations<sup>18</sup>. Our analysis specifically excludes certain migrant groups whose access to welfare could be conditioned by their specific status: tourists, individuals during short stays abroad of less than three months, undocumented migrants, students, civil servants, asylum seekers, refugees, posted workers, family members, seasonal workers. The data collection was based on a survey with national experts conducted in the framework of the ERC-funded project "Migration and Transnational Social Protection in (Post) Crisis Europe" (MiTSoPro).<sup>19</sup> National experts were asked to complete five questionnaires (one per policy area) detailing the eligibility conditions for accessing welfare in each country, based on national and/or international

<sup>16</sup>Also referred to as "integration/insertion income", "social assistance", "income support", etc. Generally, these are means-tested benefits conceived as the last safety net, aiming to prevent households from poverty. We mainly discuss general/non-categorical assistance schemes aiming to guarantee a minimum income to all those in need, although some countries might also provide specific schemes of categorical assistance for specific groups.

<sup>17</sup>Whereas benefits in kind cover access to doctors, hospitalisation or treatment, sickness cash benefits and invalidity benefits compensate individuals for the loss of income due to sickness/the loss of the capacity to work.

<sup>18</sup>See Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.

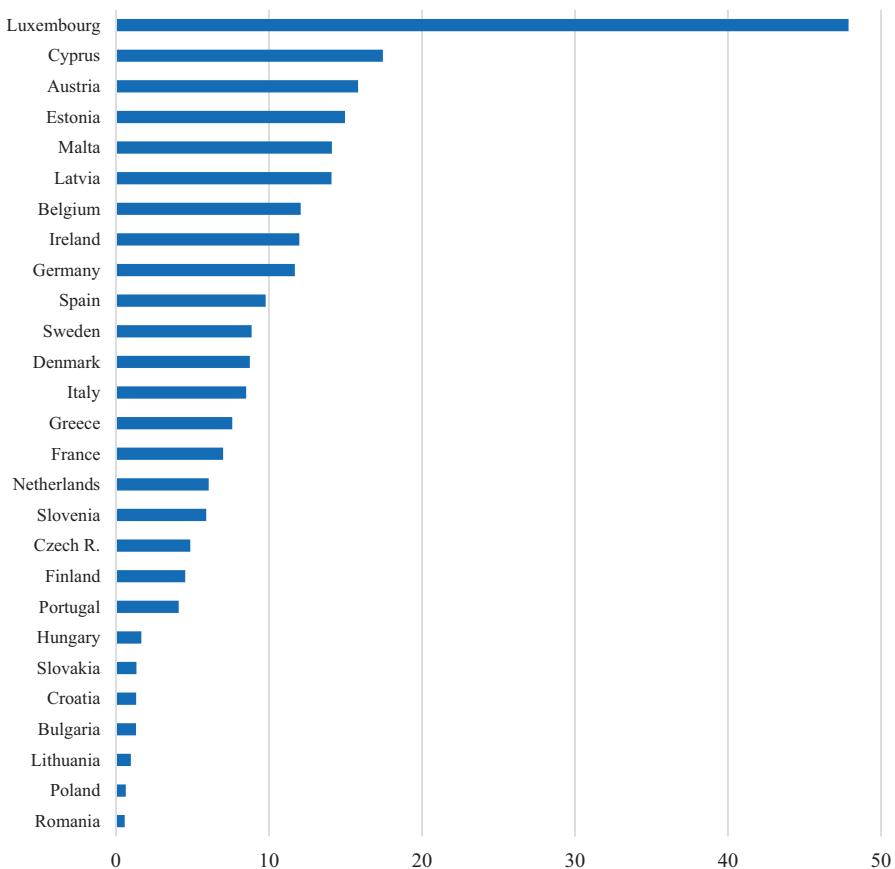
<sup>19</sup><http://labos.ulg.ac.be/socialprotection/> (accessed 16 March 2020). The survey was conducted between April 2018–January 2019, with several rounds of consistency checks being centrally conducted by the MiTSoPro team. Given the period in which the survey was conducted, the country chapters included in this volume focus mainly on the policies in place at the beginning of 2019.

legislation. The survey included standardised questions, thus ensuring comparability across the countries analysed, despite their different welfare regimes, political settings and migration histories.

Thirdly, the book maps out migrants' access to social protection across EU27. Increasing migration to and from the EU, coupled with incremental supranational social security initiatives, make EU countries very relevant case studies for our purposes. Yet, not all EU Member States are expected to be equally concerned with the social protection needs of their foreign and diaspora populations. In fact, their different migration trajectories as well as the composition of their immigrant/emigrant communities are expected to significantly shape their policy responses and repertoires when it comes to the inclusion of these groups into domestic welfare systems. To begin with, there are still significant differences between those EU Member States traditionally considered as countries of immigration (hence potentially facing stronger demands for extending welfare to foreigners- see also Schmitt and Teney 2019) and those generally labelled as emigration countries (which, in turn, may be more pressured to respond to the needs of their diaspora). Western European countries usually fall in the first category, whereas many Central and Eastern European states (which also joined the EU more recently) are primarily seen as countries of emigration.

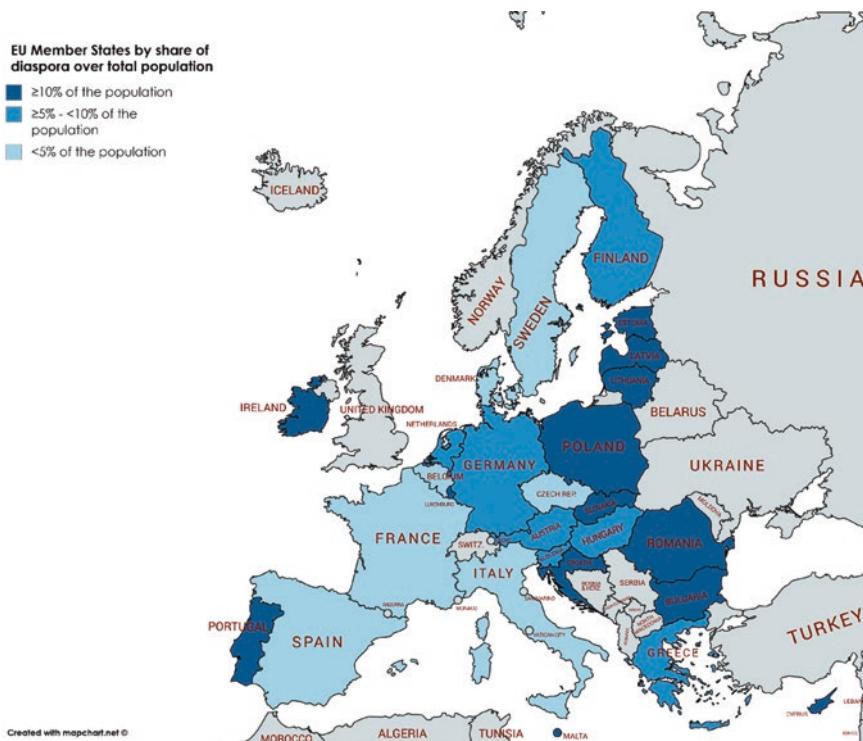
Given these different migration patterns, the demographic weight of non-national residents (Fig. 1.1) and non-resident nationals (Fig. 1.2) still varies widely across the EU. In nine countries (Belgium, Ireland, Germany, Austria, Latvia, Estonia, Malta, Cyprus, and Luxembourg), foreigners account for more than 10% of the population, with the highest share (48%) being observed in Luxembourg. However, in Poland, Bulgaria, Romania, Slovakia, Lithuania or Croatia, the share of foreigners is quite low (1% or less of the population), reason for which these countries would presumably receive less demands to ensure foreigners' access to welfare. Similarly, countries such as Croatia, Ireland, Portugal, Lithuania, Romania, Latvia, Cyprus, Luxembourg, Estonia or Bulgaria count with sizeable diasporas, thus being expected to be particularly responsive to the social protection needs of their nationals abroad, when compared to countries in which the proportion of non-resident nationals is much more limited (Fig. 1.2).

Drawing on the demographic weight of immigrant and emigrant populations, Fig. 1.3 sums up the expected societal demand that EU Member States may face for including these groups in their domestic welfare systems. Several clusters emerge, from countries which *a priori* could face stronger pressures for opening their welfare systems to both immigrants and emigrants (Estonia, Cyprus, Luxembourg, Latvia, Ireland, Malta), to countries in which this pressure for responsiveness is expected to be much more limited due to their limited shares of non-national residents and non-resident nationals (the Czech Republic). Moreover, countries in which only one of these groups is particularly sizeable are expected to face stronger claims for inclusion of immigrants only (Belgium or Spain) or emigrants only (Bulgaria, Romania, Lithuania, Portugal, Poland, Croatia or Slovakia). Finally, some countries may face more moderate demands for opening their welfare system to any (or both) of these groups.



**Fig. 1.1** EU Member States by share of foreigners over total population. (Source: Own elaboration based on Eurostat data- Population on 1 January by age group, sex and citizenship- 2018 [migr\_pop1ctz], <https://ec.europa.eu/eurostat/data/database>. Accessed 16 March 2020)

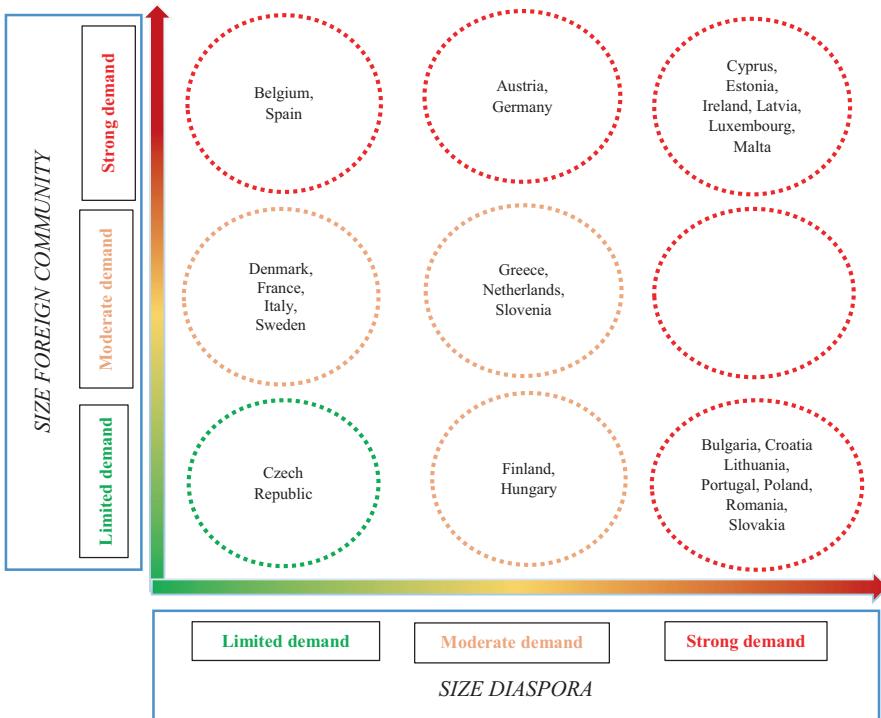
In terms of how states react to the social protection needs of these groups, one reasonable expectation would be that the more sizeable immigrant or emigrant communities are, the more likely it is for their needs and demands to be incorporated in the political agenda and, implicitly, the higher the likelihood of states to ensure their access to national welfare systems. Drawing on this rationale, countries counting with large migrant groups could become particularly concerned with their social protection in response to this demographic visibility, thus granting them access to welfare entitlements. In turn, EU Member States in which the stocks of immigrants and/or emigrants are considerably smaller would be less motivated to become particularly inclusive towards these communities. Yet, a reversed reaction is also likely to emerge, especially if states ponder the anticipated costs of their policies in the decision to grant or not welfare benefits to non-nationals or non-residents. When these groups are relatively small, ensuring their access to welfare may result in a



**Fig. 1.2** Relative size of diaspora populations (share of non-resident nationals over total population). (Source: Own elaboration based on OECD data. The data on diaspora stocks is from OECD (2015) “Connecting with emigrants: a global profile of diasporas 2015” and it refers to the emigrant population aged 15+ across 84 selected destinations (33 OECD countries and 51 non-OECD states). For Malta and Cyprus, the stocks of diaspora are from the DIOC-E 2010/2011 Labour Force Status dataset, covering emigrant population aged 15+ across 87 destinations (35 OECD countries and 52 non-OECD states). The data on total population is from the OECD Historical Data file (population 15+, reference year 2010, [https://stats.oecd.org/Index.aspx?DataSetCode=POP\\_PROJ#](https://stats.oecd.org/Index.aspx?DataSetCode=POP_PROJ#), accessed 16 March 2020))

low-cost political decision, as few individuals would potentially qualify as eligible applicants. Moreover, adopting such policy would not only be feasible due to limited costs involved, but it could also come with a symbolical reward for these countries' inclusiveness towards migrant groups. Conversely, when immigrant or emigrant populations are particularly sizeable, the decision to grant them access to the national welfare system – although much more meaningful in terms of impact- could involve significant economic costs. Consequently, states may be more hesitant to adopt such policy that comes with higher economic risks, given the larger pool of non-nationals and non-residents who could become entitled to claim welfare benefits.

Nevertheless, these initial expectations do not take into account the timing of migration inflows/outflows, nor the specific composition of migration stocks, two



**Fig. 1.3** Initial expectations regarding societal demands for states' responsiveness, based on the demographic size of immigrant and emigrant populations (% of each group over total population). (Source: Own elaboration based on Eurostat data for immigrants and OECD data for emigrants (see detailed description of sources in Figs. 1.1 and 1.2 above). The vertical axis captures the expected demand that states may face for granting foreigners' access to welfare, based on the share of non-citizens over the total population: a) limited demand (countries in which foreigners represent <5% of the population); b) moderate demand (foreigners account for 5–<10% of the population) and; c) strong demand (countries in which foreigners represent ≥10% of the population). The horizontal axis captures the expected demand that states may face to ensure the access of non-resident nationals to welfare, based on the share of the diaspora over the total population (same thresholds as for the vertical axis). Green indicates limited demand, orange indicates moderate demand, while red indicates that strong demand is anticipated)

elements that could be equally relevant for anticipating when (and how) states implement policies that allow foreigners and/or non-resident nationals to access their welfare system. Regarding timing, one can assume that long-standing countries of immigration may be more open to granting social rights to foreigners when compared to “new” countries of immigration (see Koopmans and Michalowski 2017 for a similar argument on how rights recognition could be linked to historical immigration legacies). Consequently, EU Member States with a longer immigration tradition (Germany, France, Belgium or the Netherlands, which started to receive substantial migration inflows after World War II) are expected to have implemented by now specific policies guaranteeing foreigners' access to welfare, when compared

to countries which more recently started to attract international migrants (such as South European countries or Finland). Similarly, countries experiencing emigration waves for a long time (particularly Cyprus, Spain, Italy, Ireland or Portugal) are expected to be more inclined to pro-actively respond to the social protection needs of their citizens abroad when compared to more recent emigration countries (Poland, Romania or Bulgaria, among others). However, when it comes to countries with a longer tradition of emigration, it could also be the case that their diaspora population is already well settled abroad, with an extensive access to destination countries' welfare systems, and less need to rely on social benefits granted by origin countries. This, in turn, could reduce the need for an active intervention in the area of social protection from sending countries. Moreover, more recent emigrant communities may be precisely the ones requiring more social protection attention from their homeland, especially if they do not count with immediate access to the welfare system of their host countries.

As for the composition of migration stocks, the EU system of social security coordination and the principle of non-discrimination are expected to provide intra-EU migrants with easier access to social benefits when compared to non-EU groups whose access to welfare usually depends on each EU host country<sup>20</sup> and/or bilateral agreements concluded between EU Member States and third countries<sup>21</sup>. Consequently, one could expect that countries whose immigrant or emigrant populations mainly come from or go to other EU Member States have fewer incentives to adopt inclusive social policy programs towards non-residents or non-nationals, as most of them will, in any case, be protected by the EU framework in accessing welfare.

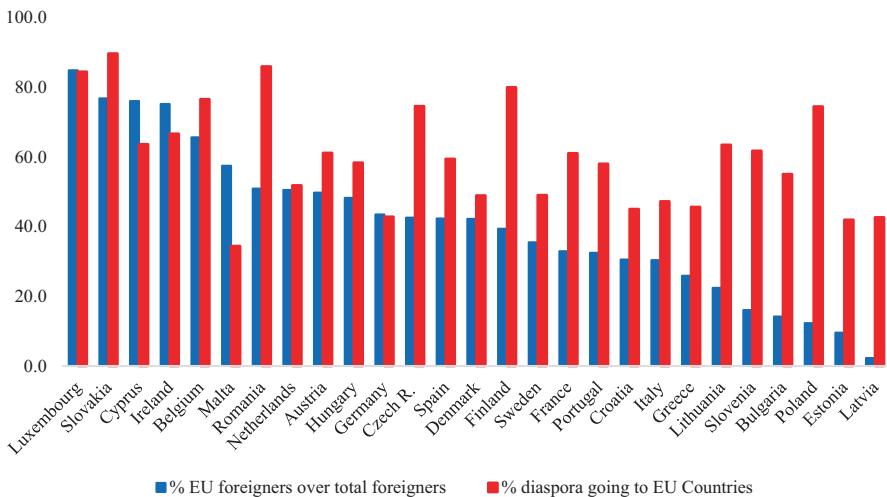
As shown in Fig. 1.4, non-national EU citizens account for more than a half of the foreign population in only eight EU countries (the Netherlands, Romania, Malta, Belgium, Ireland, Cyprus, Slovakia, and Luxembourg); whereas third-country nationals still form the majority of the stocks of foreigners across most EU Member States. However, most Europeans residing outside their countries of nationality are intra-EU migrants (more than 75% in the case of Luxembourg, Romania, Slovakia, Finland, Belgium or the Czech Republic). Only the diaspora populations of nine EU countries mainly reside in non-EU destinations.

Finally, the economic or political “leverage” that immigrant and emigrant communities have on home and host country governments could also influence states’ decision to grant them welfare entitlements. As shown in Fig. 1.5, some emigrant

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<sup>20</sup> Yet, see also Regulation No. 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation No. 883/2004 and Regulation No. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R1231>, accessed 16 March 2020).

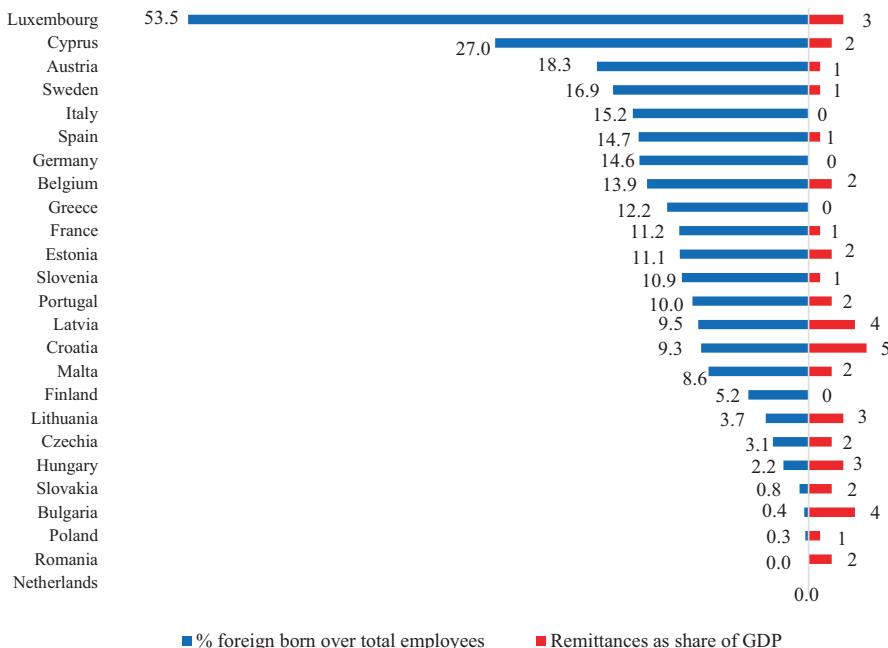
<sup>21</sup> See also COM (2012) 153 final- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions- The External Dimension of EU Social Security Coordination, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0153:FIN:EN:PDF>. Accessed 16 March 2020.



**Fig. 1.4** Share of mobile EU citizens from the total foreign population and from the total diaspora of each EU Member State. (Source: Own elaboration based on the 2018 Eurostat data [migr\_pop1ctz] for foreigners and DIOC-E 2010/11 Labour Force Status data for nationals abroad (emigrant population aged 15+ across 87 selected destinations))

communities can be seen as important economic actors for their homeland, as their remittances represent a substantial share of the Gross Domestic Product (GDP): 3% for Hungary, Lithuania or Luxembourg; 4% in Bulgaria and Latvia; or even 5% in Croatia. Consequently, these origin countries may be more incentivised to adopt specific policies for their nationals abroad when compared to other sending countries whose diaspora populations make more limited economic contributions (for instance, Italy, Germany, Finland or the Netherlands). Moreover, countries in which immigrants constitute a lower share of the workforce (especially Central and Eastern European countries, which return low shares of foreign-born workers over total employees) may be less likely to adopt specific policies for this group when compared to countries in which 15% or more of the workforce is foreign-born (Fig. 1.5).

In addition, the political leverage that these communities count with could also motivate policy-makers in home and host countries to become particularly responsive to their social protection needs. For instance, one could reasonably assume that countries in which immigrants and emigrants count with voting rights may be more prone to address their welfare demands in national legislations, especially if these communities are particularly large. The diaspora literature, in particular, has underlined how economic and electoral interests—among other factors—may push sending states’ authorities to please citizens abroad with policies that respond to their needs (Gamlen 2008; Lafleur 2013). Similarly, scholars working on immigrants’ voting rights postulated that foreigners’ enfranchisement may trigger parties’ responsiveness to immigrants’ interests (Bird et al. 2011; Vintila and Morales 2018). Across the EU, all Member States recognize the right of mobile EU citizens to vote at local and European Parliament elections (Shaw 2007; Vintila 2015); and in some



**Fig. 1.5** EU countries by share of foreign-born over total employees and remittances as share of GDP. (Source: Own elaboration based on the 2014 Eurostat dataset Employee by migration status, educational attainment level, occupation and working time (lfs0\_14leew, <https://ec.europa.eu/eurostat/data/database>, accessed 16 March 2020) and the 2018 World Bank data on Migrant Remittances Inflows (<https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>, accessed 16 March 2020))

countries (Croatia, Slovakia, Sweden or Hungary), they can also vote in regional elections. Some EU Member States also enfranchise all non-EU nationalities for local elections (Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Slovakia, Slovenia, Sweden) and regional elections (Denmark, Hungary, Slovakia, Sweden); whereas others (Spain or Portugal) recognize electoral rights only to specific non-EU nationalities (Arrighi et al. 2013). As for emigrants, almost all Member States (except for Ireland, Denmark and Malta, with exceptions) allow their citizens residing abroad to vote in national parliamentary elections.<sup>22</sup>

In any case, the effect of migrants' pressure (via their demographic, economic or political leverage) on the openness of national welfare systems can also be mediated or constrained by the general characteristics of the latter. In this regard, it is important to note that the complexities of European welfare states make their classification into ideal types of social policy models a rather difficult task. Welfare scholars

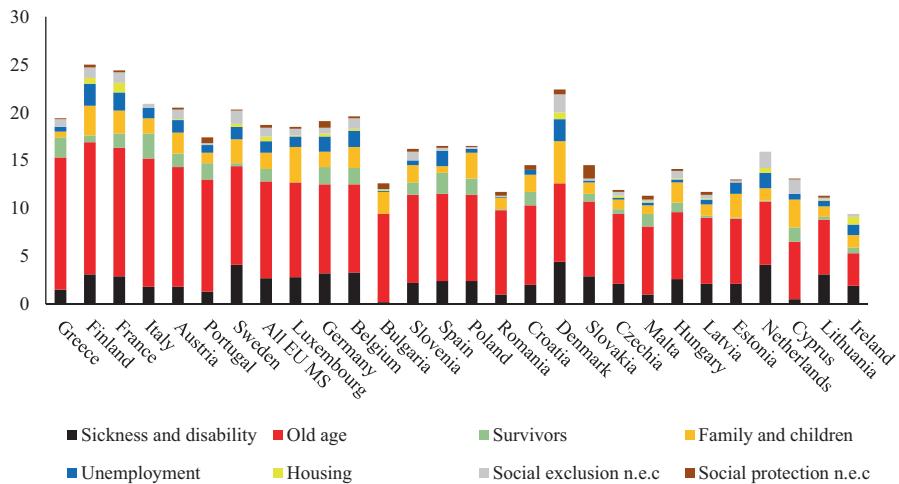
<sup>22</sup> GLOBALCIT. *Conditions for electoral rights*. <http://globalcit.eu/conditions-for-electoral-rights/>. Accessed 16 March 2020.

have proposed different classifications (see Esping-Andersen 1990; Ferrera 1996; Bonoli 1997; Österman et al. 2019, among others). Denmark, Finland and Sweden are generally labelled under the Nordic social-democratic welfare model that combines strong universalism, solidarity, equality, strong but limited safety nets, high-quality public healthcare services and high shares of social protection expenditure (Arts and Gelissen 2002; Kvist et al. 2012; Rice 2013). Austria, Belgium, Luxembourg, Germany, France or the Netherlands are usually clustered under the continental corporatist model based on Bismarkian insurance schemes, the security principle, generous unemployment benefits and general benefits based on one's prior contributions or occupational status (Arts and Gelissen 2002; Palier 2010; Österman et al. 2019). The Anglo-Saxon regime (defined by weak universalism, free healthcare services, social benefits for individuals in need- including the working poor- in which means-testing plays a significant role) is, in turn, observable in Ireland<sup>23</sup>. On the other hand, Spain, Italy, Greece, Portugal or Cyprus share important features of the Mediterranean regime characterised by institutional fragmentation, significant role of family support in social protection provision, a developed social assistance system, and rather generous old-age pensions provisions (Ferrera 1996; Arts and Gelissen 2002). Finally, Central and Eastern European countries (most of which have adopted important social policy reforms since the 1990s) are generally considered as having a social protection model of their own. This often combines strong involvement of families as providers of social protection, low pensions level, rather hybrid health care schemes and strong emphasis on redistribution to prevent poverty (Österman et al. 2019).

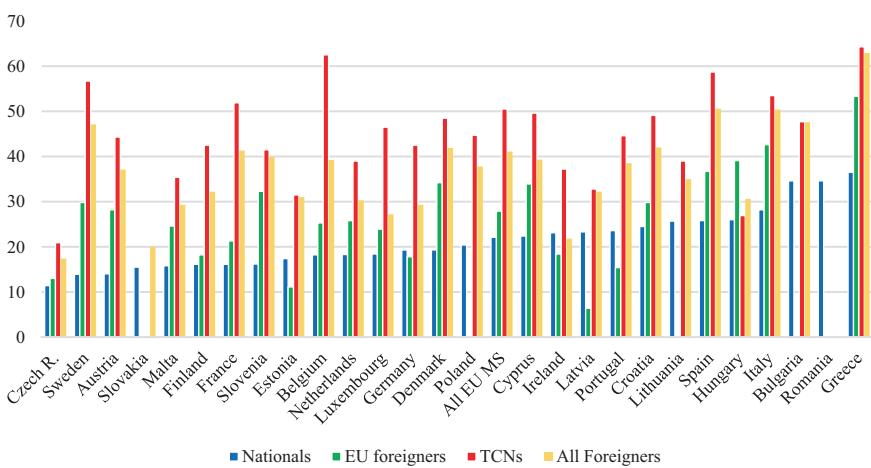
This variety in the way in which EU states respond to the social protection needs of their populations by emphasizing the importance of certain policy areas over others is also reflected in their government expenditure on social protection (Fig. 1.6). Social protection still stands out as the main function of government expenditure in Europe, accounting for 18.8% of the GDP across the EU in 2017. Old-age pension payments represent a significant component of government expenditure (10.1% of the GDP across all EU Member States in 2017), followed by sickness and disability (2.7%), family and children (1.7%), survivors (1.3%) and unemployment (1.2%). Overall, 15 current EU Member States (the Netherlands, Slovenia, Poland, Spain, Portugal, Luxembourg, Germany, Greece, Belgium, Sweden, Austria, Italy, Denmark, France, Finland) spent more than 15% on social protection in 2017, with the highest share being reached in Nordic countries and in France. However, the ratio of government expenditure on social protection to GDP is substantially smaller in Ireland, Lithuania, Malta, Latvia or Romania (less than 12% in each case).

In light of these different social policy frameworks, the share of people at risk of poverty or social exclusion (Fig. 1.7) also varies widely across EU Member States. In 2017, 22% of resident EU nationals across all EU Member States were considered to be at risk of poverty or social exclusion. This share was even higher in 12 EU

<sup>23</sup>Although the Maltese welfare system is rather difficult to classify given its mixed character, it also shares some common characteristics with the Anglo-Saxon social protection system, mainly given the British legacy with emphasis on means-tested benefits (see Österman et al. 2019).



**Fig. 1.6** Total general government expenditure on social protection (share of the GDP). (Source: Own elaboration based on the 2017 Eurostat data- General government expenditure by function (COFOG) [gov\_10a\_exp], <https://ec.europa.eu/eurostat/data/database>. Accessed 16 of March 2020)



**Fig. 1.7** Percentage of people at risk of poverty or social exclusion (18–64 years), by citizenship. (Source: Own elaboration based on the 2017 Eurostat data- People at risk of poverty or social exclusion by broad group of citizenship (population aged 18 and over [ilc\_peps05], <https://ec.europa.eu/eurostat/data/database>. Accessed 16 of March 2020)

countries, reaching more than 30% in Bulgaria, Romania and Greece. Migrants tend to be even more vulnerable than national residents. Across all EU countries, the share of foreigners at risk of poverty or social exclusion was 41.1%, up to 50.5% amongst third-country nationals. In France, Belgium, Spain, Italy, Greece and Sweden, more than a half of non-EU migrants were at risk of poverty or social

exclusion (up to more than 60% in Belgium and Greece). In these countries, but also in Denmark, Austria or Slovenia, the gap between nationals and foreigners was particularly large (more than 20 difference points in the share of people at risk). Yet, this gap was smaller in Slovakia and Hungary (less than 5%); and it was slightly reversed in Ireland, where the proportion of foreigners at risk of poverty was slightly lower when compared to nationals.

How are these different features of European welfare states expected to affect migrants' access to social protection? Currently, there is no scholarly agreement on this issue, as few arguments have been proposed so far on how social protection regimes influence migrants' social rights (see Morissens and Sainsbury 2005; Sainsbury 2006, 2012; Van Der Waal et al. 2013; Österman et al. 2019; Schmitt and Teney 2019). For instance, countries with more generous welfare policies may link service provision to habitual residence in their territory, thus automatically excluding non-residents (Bruzelius 2019). They may also be more cautious in granting immigrants' access to these generous welfare entitlements, especially in a context of fiscal pressures (Römer 2017). Other countries could appear as particularly restrictive towards immigrants' access to certain benefits simply because these benefits are granted under rather restrictive eligibility conditions for all claimants, including nationals. Finally, one could also expect that countries with universal healthcare services automatically open entitlement to these services also for foreigners. However, systems that are more generous in offering non-contributory means-tested benefits may be more restrictive towards migrants' access to these benefits by imposing more demanding residency conditions to avoid being more susceptible to attract migrants that would depend on their welfare provisions.

Of course, politicisation of migrants' access to welfare adds another layer of complexity by further incentivising restrictiveness in social policy regulations towards migrants, especially in countries with more generous welfare provisions. Building on the work of Andersen and Bjørklund (1990) on welfare chauvinism, scholars have looked at how right-wing populist parties combine sceptical discourses on immigration with favourable views on economic redistribution limited to the native population and "deserving migrants" (Rydgren 2004; Banting 2010; Van Der Waal et al. 2010). As shown in several case studies, mainstream parties often adjust their discourse on migration and welfare in response to the electoral success of these right-wing populist parties (Kitschelt and McGann 1995; de Lange 2007; Schumacher and van Kersbergen 2014). Whereas third-country nationals tend to become the main target of such discourses, one recent illustration of mainstream party adjustment to right-wing welfare chauvinist parties concerned mobile EU citizens. In 2013, a group of British, German, Austrian and Dutch ministers complained to the European Commission that some of their cities were 'under a considerable strain by certain immigrants from other member states'. The letter found support among various centre parties (the UK Conservatives, the French *Les Républicains*) that called for stricter controls, repatriation and the possibility to restrain the free movement of some EU citizens (Barbulescu et al. 2015). This episode demonstrates how politicization at EU level could aim to adjust supranational norms that protect immigrants' access to welfare.

Departing from these general societal and welfare dynamics, the next section summarizes some of the main findings of this volume in terms of how EU Member States ensure the access to social benefits for their immigrant and emigrant populations.

## **1.3 Comparing Levels of Inclusiveness across Countries and Between Groups: Main Patterns of Convergence and Divergence**

The empirical analyses developed in the country chapters included in this volume confirm the existence of several instances of policy convergence in the way in which European democracies legally define the access of their immigrant and emigrant populations to domestic welfare systems.

### ***1.3.1 Habitual Residence, Territoriality and Restrictiveness of Welfare Regimes towards Non-Residents***

To begin with, the country chapters show that, in general, EU Member States tend to be more inclined to grant residence-based welfare entitlements to foreigners when compared to nationality-based social benefits for their nationals residing abroad. As discussed in this volume, most Member States have implemented rather restrictive policies towards the access of their emigrant populations to social benefits. In fact, regardless of the size of the diaspora, the economic and political leverage of the later, or the type of welfare regime, European countries subscribe to the same pattern that disqualifies non-residents from most cash-related benefits. Their national boundaries still constitute the primary locus in which individuals can enjoy welfare provisions. This means that emigrants do not have a basic entitlement to various social benefits from their home countries just because they hold the status of nationals of these countries. On the contrary, given that most social benefits are conditional upon residence in the country that grants them, exportability is rarely possible and generally levied only on grounds of international conventions, the European social security coordination system, or bilateral social security agreements signed with third countries. This finding thus confirm a pattern already highlighted in previous studies (see, for instance, Guiraudon 2002) of a decline in the relevance of nationality for accessing welfare, compared to the strengthening of residency-related conditions.

This strong emphasis on residence in access to social protection that directly hinders emigrants' eligibility for social benefits from their countries of nationality is observed across most policy areas analyzed here. Although short-term temporary stays abroad are generally allowed in particular circumstances (for instance, for the purpose of medical treatment abroad or for holidays), when individuals leave their

EU countries of nationality to permanently settle abroad, they usually lose their entitlement to social benefits from these countries.<sup>24</sup> As an illustration, access to the health care system or sickness cash benefits is usually based on the principle of territoriality and generally granted only to those habitually residing or working in a particular country. Consequently, moving abroad permanently usually terminates membership to the health care system of the country of nationality. In the same vein, residence in the country generally conditions access to unemployment benefits, non-contributory pensions, family-related benefits and especially so, guaranteed minimum resources. For instance, none of the EU Member States that implements non-categorical assistance schemes aiming to guarantee a minimum income to all those in need allow their nationals residing abroad to claim these benefits, as recipients must effectively reside in these countries. In some cases (see the example of Cyprus in this volume), this effective residence criterion for claiming social assistance is further complemented by a minimum period of prior and continuous residence in the country, this additional element constraining even the access of returnees to this specific benefit.

### ***1.3.2 Differentiated Exclusion: Waiving the Residence Condition for Emigrants***

Despite this general trend pointing towards the restrictiveness of national social policy legislations towards non-resident citizens, the EU coordination system allows mobile EU citizens to continue receiving certain benefits from their countries of nationality while residing in another EU country, thus shifting the restrictive understanding of welfare as a territorial responsibility. One obvious example is the possibility of EU citizens to retain (for a short period) their unemployment benefits when moving to an EU/EEA (European Economic Area) country for the purposes of finding a job<sup>25</sup>. Additionally, EU nationals also enjoy non-discriminatory access to most welfare entitlements in their EU countries of residence. Given that, as previously mentioned, most Europeans living outside their countries of nationality reside in other EU Member States, this supranational framework guarantees their access to social protection even in absence of targeted national policies to ensure their inclusion in the domestic welfare system of their origin countries.

Moreover, although eligibility for most social benefits is built on residence, some exceptions (or waivers of the territoriality condition) can still be identified across specific policy areas, thus indicating a certain selectivity in the exclusion of emigrants from domestic welfare systems. By way of example, invalidity benefits can

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<sup>24</sup>This excludes, of course, the case of individuals who reside abroad while still working in the service of employers based in the country of nationality, a group that is specifically excluded from our analysis.

<sup>25</sup>Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009. See also: [https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/transferring-unemployment-benefits/index\\_en.htm](https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/transferring-unemployment-benefits/index_en.htm). Accessed 16 of March 2020.

often be exported worldwide (see, for instance, the chapters on Ireland, Malta or Romania) although, in some cases (France, Belgium or Poland), they can only be transferred within the EU, unless otherwise stipulated in bilateral agreements with third countries. Contributory old-age pensions also stand out as an important exception to the strong link between residence and access to benefits across the EU<sup>26</sup>, while also representing one of the most important components of government expenditure across EU countries (Fig. 1.6 above). Unlike other cash payments, contributory old-age pensions can generally be transferred to both EU and non-EU countries (see the chapters on Austria, Croatia, Finland, France, Hungary, Ireland, Lithuania, Malta, the Netherlands, Portugal, Spain, Slovakia or Sweden).<sup>27</sup> Yet, some Member States (such as Bulgaria or the Czech Republic) still constrain non-resident nationals' possibility to transfer these pensions to third countries on the existence of bilateral agreements with the latter; whereas the Netherlands conditions the amount received after the transfer of the contributory pension to the existence of such bilateral conventions. Additionally, some EU Member States also offer specific public non-contributory pension schemes. However, as discussed in the country chapters in this volume, access to these pensions usually depends on residence in the country. Thus, non-resident nationals are excluded as potential claimants (with some exceptions- see the chapter on Spain for details regarding the means-tested non-contributory pension that the Spanish authorities make available to elderly non-resident nationals who cannot work due to illness and do not receive a contributory pension from the home or host country). Nevertheless, the general tendency of exclusiveness of social policy legislations towards diaspora populations is sometimes partly compensated by specific policies or programs that European states develop in the attempt to respond to certain social protection needs of their nationals abroad (for an in-depth discussion of such programs, see Lafleur and Vintila 2020a).

### ***1.3.3 Equal Access for Foreign Residents in Social Policy Regulations, but Modes of Exclusion via Immigration Policies and the Labour Market***

States' restrictive behaviour towards diaspora populations does not necessarily correlate with their policy stances towards foreign residents. Our findings indicate that most European states tend to be rather inclusive in granting equal access of non-national residents to welfare benefits, thus responding to a residence-driven rationale (rather than a nationality-driven philosophy) in the design of the eligibility conditions to access social rights. However, there are still important exceptions

<sup>26</sup>For conditions of retiring abroad within the EU, see also Regulation (EC) No. 883/2004, Regulation (EC) No. 987/2009 and [https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index\\_en.htm](https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index_en.htm) (accessed 16 of March 2020).

<sup>27</sup>In general, recipients are required to follow the procedure of the proof of life to receive their pensions abroad.

from this pattern of social inclusion based on territoriality, such exceptions being mostly visible in the area of non-contributory benefits and especially affecting third-country nationals.

As discussed in the country chapters, nationality is of rather minor importance once foreigners obtain access to employment in their EU countries of residence. Broadly speaking, social security laws do not distinguish between claimants based on their nationality, they do not reserve social benefits only for nationality holders, nor do they explicitly impose specific migration-related conditions that could directly obstruct immigrants' access to welfare. Entitlement to most benefits derives from employment or qualifying periods of contribution to the social security system of the EU countries of residence, rather than being conditional upon nationality. Gainful activity thus becomes a decisive element for accessing contributory benefits and as soon as a person starts contributing to the social security system of most EU countries, he/she has equal access to benefits with the national citizens of those countries.

Yet, complying with the qualifying period of contribution or employment required for accessing social benefits may be more problematic for foreign workers compared to their national counterparts. This is especially the case when considering immigrants' employment vulnerability. For instance, the unemployment rates of foreigners (especially third-country nationals) across the EU have been consistently higher when compared to the unemployment rates of non-mobile EU citizens<sup>28</sup> and important obstacles (lack of recognition of qualifications obtained abroad, labour market discrimination, etc.) still prevent migrants from finding suitable jobs in their EU host countries<sup>29</sup>. Additionally, holding a valid work permit does not always follow an easy procedure given the variation in the regulations applicable in this regard across the EU. Hence, although social policy regulations may not directly exclude foreigners from national welfare systems, domestic immigration policies regulating the right to enter, reside and work in a particular country or general labour market inequalities between migrants and non-migrants could still lead to modes of exclusion from welfare entitlements. This reinforces the findings of previous studies regarding the importance of immigration policies in imposing different levels of conditionality that could affect foreigners' access to welfare (Sainsbury 2012; Shutes 2016; Bruzelius 2019; Schmitt and Teney 2019).

However, the type of benefits is another important element to be considered. Our findings generally confirm the initial expectation that states are more likely to restrict the access of mobile individuals (especially TCNs, who are also at higher risk of poverty and social exclusion) to non-contributory benefits when compared to the contributory ones. The country chapters show that benefits typically linked to

<sup>28</sup> Eurostat (2019). *Migrant integration statistics- labour market indicators* (lfsa\_urgacob and lfsa\_urgan). [https://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant\\_integration\\_statistics\\_%E2%80%93\\_labour\\_market\\_indicators#Unemployment](https://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_%E2%80%93_labour_market_indicators#Unemployment). Accessed 16 of March 2020.

<sup>29</sup> Eurostat (2017). *Migrant integration: 2017 edition*. <https://ec.europa.eu/eurostat/documents/3217494/8787947/KS-05-17-100-EN-N.pdf/f6c45af2-6c4f-4ca0-b547-d25e6ef9c359>. Accessed 16 of March 2020.

employment tend to be open to all claimants on equal grounds (regardless of their nationality), although with some exceptions. For instance, most countries have no statutory differences between the eligibility requirements for accessing a contributory pension applied for national and foreign residents. However, some differences exist in terms of the possibility to export such pension. By way of example, unlike their national or EU counterparts, third-country nationals receiving a contributory pension from Belgium or Luxembourg cannot generally export it (with some exceptions); whereas those receiving a contributory pension from Lithuania can transfer it only when moving to a country that has concluded a bilateral agreement with Lithuania.

In general, foreigners residing in EU Member States can also access cash benefits in case of sickness as well as maternity, paternity or unemployment benefits under the same eligibility conditions as those applied for national residents. For unemployment benefits in particular, EU citizens can also aggregate the periods spent in other EEA countries for complying with the requirement of prior contribution required to qualify for these benefits in the new EU country of residence. As discussed in the chapter on Denmark, this also implies that an EU migrant worker can have more immediate access to Danish unemployment benefits than the national worker who stayed in Denmark. This situation has become a key issue of debate in Danish politics, despite the condition applied in Denmark that individuals must be members of the Danish unemployment insurance fund for three months before using the principle of aggregation, a condition aiming to prevent EU citizens' immediate access to the unemployment scheme.

The situation is even more nuanced for third-country nationals as in some cases, national provisions put them in a disadvantaged position for accessing unemployment benefits compared to mobile EU citizens. For instance, TCNs must hold the long-term residence status to qualify for unemployment benefits in Bulgaria, whereas in France, they are required to prove regular residence that is strictly assessed based on the type of residence permits they possess. The Danish legislation also requires claimants of unemployment benefits to have resided seven years out of the last 12 years in Denmark. Although this prerequisite applies to nationals and foreigners alike, it still puts TCNs in a more vulnerable position, especially since periods spent in non-EU countries do not count for the seven years requirement (unlike periods spent in the EU). Furthermore, in Malta, third-country nationals who are not permanent residents cannot access unemployment benefits, as they are unable to register for work at the employment service, which, in turn, is a requirement for receiving unemployment benefits.

### ***1.3.4 Immigrants' Access to Non-contributory Benefits: More Instances of Direct Exclusion***

The situation is much more complex when it comes to foreigners' access to non-contributory benefits that in many cases, has become a sensitive and rather controversial issue in political and societal debates. In fact, it is in the area of non-contributory

benefits in which states show more direct or indirect forms of exclusion of non-national residents from domestic welfare systems. In this particular area, claimants' nationality remains an important element conditioning their access to welfare. For example, whereas in some countries, EU and non-EU foreigners are entitled to access guaranteed minimum resources schemes under the same eligibility conditions as national residents (see the examples of Austria or Ireland), in others, residence-related clauses can directly hinder foreigners (especially TCNs with limited prior residence) from claiming such benefits. To qualify for social assistance in Belgium (a country in which the share of migrants at risk of poverty and social exclusion is particularly high- Fig. 1.7 above), EU citizens must have resided for at least three months, whereas third-country nationals must be registered in the Belgian population register (which is usually possible only after five years of residence). Similar situations are identified in Croatia, Lithuania, Slovenia, Cyprus or Luxembourg, where TCNs' access to social assistance is made conditional upon a prior residence period of at least five years or having obtained the permanent resident status. In Portugal, unlike national residents or EU citizens, third-country nationals are also required to have resided for at least a year to be able to claim social assistance. Some countries also condition access to social assistance for all claimants to a minimum period of prior residence (five years in Cyprus or seven out of the last eight years in Denmark), a requirement that can be particularly challenging for migrants, especially third-country nationals. Sometimes, access to guaranteed minimum resources schemes is also restricted for EU nationals: as explained in this volume for the German case, EU citizens who enter Germany as jobseekers or non-employed cannot claim the Minimum Income for Non-Participants.

As discussed above, non-contributory pensions represent another social protection area in which some EU Member States put forward more restrictive eligibility conditions that mainly affect individuals who find themselves in a situation of international mobility. In some cases, non-EEA residents are directly excluded as potential beneficiaries of such pensions. Examples come from Belgium or Portugal, where non-EEA residents cannot claim a non-contributory pension unless specifically provided for via bilateral agreements; but also Malta, where TCNs do not qualify for such pensions unless they are long-term residents. In other cases, even when the eligibility conditions for accessing a social pension are the same between nationals and foreigners, strict residence provisions still apply. As an illustration, a qualifying residence period of three years is required to access non-contributory pensions in Finland, whereas in Estonia or Italy, this period is extended to five and ten years, respectively. Similarly, social pension recipients in Cyprus must be permanent residents and have resided in Cyprus/EU/EEA/Switzerland for at least 20 years after the age of 40 or at least 35 years after the age of 18. In France, TCNs must prove regular and continuous residence with an authorisation to work for at least ten years to qualify for non-contributory pensions. Thus, by linking non-contributory pension schemes to residence conditionality, these countries explicitly exclude elderly migrants who arrived more recently, although some of them may still qualify for the general guaranteed minimum resource schemes offered by some of these host countries.

Finally, unlike maternity and paternity benefits that foreigners can generally access under the same conditions as those applied for national residents, access to child benefits across the EU is often conditioned by residence requirements.<sup>30</sup> For instance, the child allowance in Croatia is available to the parent of the child who has uninterrupted residence in the country for at least three years prior to the application. As explained in the chapters on Bulgaria, Romania, Malta, Luxembourg, Finland, Sweden, the Netherlands or Portugal, children are also generally required to reside in these countries to receive child benefits (with exceptions of residence in other EU states or countries covered by bilateral agreements). In Cyprus, nationals and foreigners alike must have resided legally and continuously in the country for five years before applying for child benefits; whereas in Lithuania, TCNs with temporary residence permits are eligible for child benefits if they have worked for at least six months or are registered at the Employment Service if unemployed. Denmark also requires a certain period of prior residence to qualify for family benefits: six months of residence or employment in the past ten years to qualify for the universal child benefit and one-three years of residence to be eligible for the child allowance. As explained in the country chapter, access to family benefits has become a recurrent topic in Danish politics, especially given the demands of the Danish People's Party (DPP) to restrict EU citizens' right to child benefits. Denmark is not an isolated case in this regard, as migrants' access to family benefits has become a politically sensitive issue across the EU (see also Strban 2016). Similar restrictive proposals also gained salience and raised tensions in other Member States, especially Western European countries with sizeable immigrant communities. For instance, the right-wing candidate for the 2017 presidential elections in France proposed to make the regular residence condition for accessing family benefits more restrictive, whereas the EU launched the infringement procedure against Austria for trying to adapt family benefits to the costs of living in the child's country of residence.

### ***1.3.5 The Negative Consequences of Take-Up of Social Benefits***

Even when foreigners are entitled to claim benefits on equal grounds with their national counterparts, their access to welfare may still be indirectly constrained by the potential negative consequences that the take-up of such benefits could have for other migration-related entitlements. As discussed in some country chapters (see Belgium, France, Ireland, Greece or Finland), reliance on social assistance is often considered as a burden on public funds. In turn, this can negatively affect the renewal of migrants' residence permits, their applications for family reunification, or even

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<sup>30</sup> For the EU provision on coordination of family benefits, see Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009. See also: [https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/family-benefits/index\\_en.htm](https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/family-benefits/index_en.htm). Accessed 16 of March 2020.

their citizenship applications, as the latter generally depend on conditions of social integration and proving one's stable income and self-sufficiency. This creates an extra layer of conditionality that could affect foreigners' practical access to welfare (see also Lafleur and Mescoli 2018 on the practice of residence permits removal for EU nationals claiming certain welfare benefits in Belgium). Finally, as highlighted in some chapters, even when migrants do benefit from equal access to welfare, the required eligibility criteria (including qualifying periods of contribution/employment, waiting periods, type of documents supporting the application or the general application procedure) can still make it more difficult for migrants to access benefits when compared to non-migrants.

Summing up, country chapters included in this volume point towards interesting variations in the way in which EU Member States respond to the social protection needs of their immigrant and emigrant populations. Although national welfare regimes usually seem more inclusive towards non-national residents when compared to non-residents nationals, significant differences still exist in the regulations conditioning foreigners' access to benefits. In general, our results indicate that EU coordination rules neutralise potential legal barriers for mobile EU citizens' access to welfare (although there are still some exceptions, such as the lack of full harmonisation of the Croatian legislation to ensure equal treatment for EU nationals in terms of accessing welfare). In many cases, this also confirms the initial expectation according to which the EU social security coordination and the principle of equal treatment and non-discrimination of mobile EU citizens place this group in a better position to access social benefits when compared to non-EU migrants, thus creating different tiers of entitlement to welfare. Indeed, the process of mapping out TCNs' right to social protection across the EU reveals important gaps in terms of access, especially when it comes to benefits that are not traditionally linked to employment or contributions to the host countries' social security system. Whereas in some countries, (certain categories of) TCNs are directly excluded from the list of potential beneficiaries of specific benefits, in others, much subtler mechanisms of exclusion can be observed. Overall, these findings still show the existence of significant inequalities in access to social protection for individuals coming to or moving out of the EU. The country chapters included in the rest of the volume aim precisely at highlighting and contextualising the complexities of such inequalities.

## 1.4 Structure of the Volume

The rest of the volume includes 27 country chapters, one per each EU Member State. Each chapter starts with a general discussion regarding the evolution and main characteristics of the national welfare system, thus analyzing the type of social protection regime operating in each country, recent social policy reforms and the main contributory and non-contributory benefits applicable in each case. This first part is followed by a contextualization of the history of immigration and emigration of each Member State, with each chapter providing information regarding the evolution of migration flows, main countries of origin and destination of immigrants/

emigrants, as well as the main type(s) of migration (labour migration, lifestyle migration, family reunification, etc.).

After this introductory section that provides a contextualization of each case study, each chapter examines the main eligibility conditions for accessing social benefits for national residents, non-national residents and non-resident nationals. The main findings are interpreted in relation to key migration patterns and the type of welfare regime. All chapters focus specifically on five core policy areas: unemployment, health care, pensions, family-related benefits and guaranteed minimum resources. For each type of benefit, authors explain how national and non-national beneficiaries are legally defined in national legislations, which are the qualifying periods of insurance, residence, or age for accessing these schemes, the characteristics of means-tested programs versus those granted on a universal basis, and the duration of benefits. The chapters also provide an in-depth discussion of situations in which access to welfare is conditioned by nationality (with foreigners receiving a differentiated treatment when compared to nationals) or residence (with non-resident nationals being excluded from certain benefits due to exportability regulations). Authors also discuss migration-related requirements (specific residence permits, authorisations of stay, visas, having a fixed domicile, etc.) that could hinder immigrants' and emigrants' possibility to access social protection; while also emphasizing how bilateral social security arrangements between home and host countries could ensure better protection against social risks for mobile individuals.

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# Chapter 2

## Migrants' Access to Social Protection in Austria



Monika Riedel and Andreas Chmielowski

### 2.1 Overview of the National Social Security System and Main Migration Features in Austria

#### 2.1.1 *Main Characteristics of the National Social Security System*

The Austrian social security system covers a broad range of social risks, most of them via a compulsory social insurance system. A recent reform has reduced the number of involved institutions and reallocated responsibilities as of January first, 2020 (Table 2.1).

These organisations are responsible for the areas related to health and invalidity, pensions, and some family benefits. Other family benefits are governed by specific national acts, such as one for the protection of mothers (*Mutterschutzgesetz* MSchG), and are financed from general taxes. Unemployment benefits are mostly financed via payroll contributions and managed by the Public Employment Service Austria (*Arbeitsmarktservice* AMS).<sup>1</sup> Guaranteed minimum resources are currently funded, regulated and organized by the nine federal states. Regional differences in regulations are minimised by the federal legislator (*Sozialhilfe-Grundsatzgesetz*),

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<sup>1</sup>AMS (2018). Unemployment insurance (UI). <http://www.ams.at/en/public-employment-service-austria-ams/unemployment-insurance>. Accessed 16 April 2018.

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**Table 2.1** Austrian Social Security Institutions and Main Governing Acts (as of 01.01.2020)

Unemployment	Accident	Health	Pension	Poverty
Public employment service Austria (AMS) Act: AlVG	Umbrella Association of Austrian Social Security Organisations			<i>Bundesländer</i> governments Act: Separate in each <i>Bundesland</i> , based on national legal guidelines
	Austrian workers' compensation funds (AUVA) Act: ASVG	Austrian health insurance (ÖGK) Act: ASVG	Pension insurance institution (PVA) Act: ASVG	
	Insurance institution for civil servants, railways and mining industry (BVAEB) Act: B-KUVG			
	Social security institution for self-employed persons (SVS) Act: SVS-G			

Source: Own elaboration

limiting, among other things, the amount of benefits per month and person.<sup>2</sup> However, in December 2019, parts of this legislation were revoked by the Constitutional Court.

Health insurance coverage for around 80% of the overall population is provided by the Austrian Health Funds (*Österreichische Gesundheitskasse ÖGK*) and regulated by the general act on social insurance (*Allgemeines Sozialversicherungsgesetz*, ASVG).<sup>3</sup>

The Austrian social insurance system is governed by the following characteristics:

- Principle of insurance: Insurance is the prerequisite for drawing most benefits. Many cash benefits are income-related due to income-dependent contributions. The insurance is compulsory for persons who are either employees or self-employed and covers also their dependants.
- Principle of solidarity: Persons with higher income – who therefore pay higher social insurance contributions and taxes – help to fund benefits for persons with lower income.
- Income-related insurance contributions provide the funding basis for almost all services, in several areas complemented by state support. A non-contributory allowance can top up pensions to avoid poverty, and certain family benefits are (co-)funded by taxes. Long-term care and social assistance are the only major areas funded exclusively from taxes.

<sup>2</sup> Verfassungsgerichtshof. (2019). Sozialhilfe-Grundsatzgesetz: Höchstsatzsystem für Kinder und Arbeitsqualifizierungsbonus verfassungswidrig. [https://www.vfgh.gv.at/medien/VfGH\\_zu\\_Sozialhilfe-Grundsatzgesetz\\_Hoechstsatzsyste.de.php](https://www.vfgh.gv.at/medien/VfGH_zu_Sozialhilfe-Grundsatzgesetz_Hoechstsatzsyste.de.php). Accessed 19 March 2020.

<sup>3</sup> Before 2020, coverage of ÖGK had been split into nine *Bundesländer* schemes, SVS into farmers versus all other self-employed persons, and BVAEB into civil servants versus mining and railways.

These characteristics highlight the central role that the employment status has in the Austrian welfare system. The entitlement to most social benefits is derived from employment, not from the citizenship status. Regarding health insurance, for instance, the sector of employment defines which insurance organization is responsible for coverage (private sector, public sector and self-employed persons are covered under separate schemes). The crucial point for access to the Austrian social security system is thus the entry into legal employment. As soon as this is achieved, nationality is an irrelevant factor for accessing most benefits. Also, the right to draw tax-funded benefits depends mostly on residence, not citizenship. Having the centre of one's life in Austria is a key element in this regard, and the reason why non-Austrians are required to have residence permits in order to access these benefits. Austrian nationals have no right to draw social assistance or family benefits unless usually living in Austria.

Legal employment is possible without further conditions only for specific groups of individuals: persons from European Union (EU) / European Economic Area (EEA) countries (but not Croatia) or Switzerland; foreigners with a so-called Red-White-Red-Card plus (*Rot-Weiß-Rot-Karte plus*), and holders of a residence permit as family members or a permanent residence permit as EU citizen. For other foreign residents, employers can apply for an employment permission (*Beschäftigungsbewilligung*) for a specifically described job position. Such permissions are mostly granted for students, Croatians, farm helpers, seasonal workers and workers on rota. Permissions are granted by the regional AMS, given that the prospective employer fulfils further conditions.

The Red-White-Red Card was introduced in 2011 for prospective long-term migrants from third countries. Applications are evaluated by the AMS. As the introduction of the Red-White-Red Card focused on achieving "high quality immigration", four schemes were created: "very highly qualified workers", "skilled workers in shortage occupations", "other key workers", and "start-up founders". After 2 years of employment in Austria, foreigners can apply for a Red-White-Red Card.

### **2.1.2 *Migration History and Key Policy Developments***

During the nineteenth and early twentieth centuries, when the Habsburg Empire exceeded the territory of today's Republic of Austria, migration flowed mostly from east to west, to the primary urban and industrial centers. Although the monarchy was also an important country of emigrants bound mainly for Germany, Switzerland, Italy, and increasingly, the Americas, immigration usually outstripped emigration. This still can be observed in the numerous family names originating in countries of the former Habsburg Empire. During and after World War II, many German-speaking residents from Austria's neighbour countries to the East were integrated into the Austrian population, with the exception of Jewish people. The accession of former members of the Habsburg Empire to the European Union again tightened the bonds between these countries and Austria.

As of October 2016, of Austria's 8,8 million inhabitants, more than 1,6 million (18.8%) were not born in Austria, with 45.5% of them (751,000 persons) coming from EU/EEA/Switzerland, and another 35.1% from other parts of Europe. According to the *Statistik Austria* (2017)<sup>4</sup> data, persons born in Germany form the largest group (224,000 persons accounting for 2.5% of the overall population), followed by those born in Bosnia and Herzegovina (165,000), Turkey (160,000) and Serbia (136,000). Syria and Afghanistan together contributed only half as many foreign-born residents for Austria as Bosnia and Herzegovina or Turkey, but over a very concentrated period of time. For instance, during 2015–2017, of about 156,000 asylum applications filed in Austria, Syrians and Afghans comprised the largest shares (26% each). Since the end of 2015, the climate towards immigrants (especially foreign-born individuals with a (presumed) Muslim background) has become much more critical, if not hostile. The 2017 parliamentary elections resulted in a coalition of the conservative party (ÖVP) and the far right-wing party (FPÖ), with especially the latter promising a strict anti-immigration regime. The salience of migration during the electoral campaigns needs to be seen in context of the large foreign influx to Austria: in 2015, with 88,300 new asylum applications, Austria was the fourth largest receiver of asylum seekers in the EU (Buber-Ennser et al. 2018), but ranks only 15th in a comparison of overall population size across the EU. After the break-up of the coalition in spring 2019, another election and the formation of a new coalition between ÖVP and the Green Party, anti-migrant sentiments have cooled only to some extent.

In 2016, roughly 25,600 non-EU/EEA/Swiss citizens were granted a first residence permit in Austria, and about 42,300 persons applied for asylum. About 1200 persons were granted a Red-White-Red Card or a Blue Card EU and thus fulfil the conditions for one of the categories of key workers. Family reunification resulted in 14,200 non-EU/EEA/Swiss citizens coming to Austria, and about 7400 students, *Au-Pairs*, researchers and clerical persons were granted a first residence permit. Seasonal work accounted for 3200 workers on average (*Statistik Austria* 2017).

For several years, there was public concern regarding immigration into low paid employment, often also including over-qualification of the employees. In 2014, 23.5% of foreign-born persons working in Austria stated that they felt overqualified in their job, compared to 8.8% of workers born in Austria. Within the group of foreign-born workers, over-qualification was less severe (but still higher than for Austrian-born persons) among those born in other EU15 countries, Turkey, and persons with more than 20 years of residence in Austria (Pesendorfer 2015). The issue of over-qualification was addressed by cooperation between the Ministry of Labour and Social Affairs and the Secretary of State of Integration. This cooperation aimed at providing information and guidance to migrants in the process of having foreign credentials accredited and validated. Following international examples, a minimum income requirement for family reunification was introduced in the Act on Residence

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<sup>4</sup> *Statistik Austria*. (2017). *Migration und Integration. Zahlen. Daten. Indikatoren*. [https://www.oeaw.ac.at/fileadmin/kommissionen/KMI/Dokumente/Migration\\_und\\_Integration.\\_Zahlen\\_Daten\\_Indikatoren/migration\\_und\\_integration\\_2017.pdf](https://www.oeaw.ac.at/fileadmin/kommissionen/KMI/Dokumente/Migration_und_Integration._Zahlen_Daten_Indikatoren/migration_und_integration_2017.pdf). Accessed 7 May 2018.

and Settlement (*Niederlassungs- und Aufenthaltsgesetz* – NAG 2005), as family-related reasons (41.6% in 2014) rank even higher than work-related reasons (31.5%) as major reason for immigration to Austria (Pesendorfer 2015:16). It reduced the immigration of low-skilled persons from third countries who want to join their partners in Austria who themselves are receiving welfare benefits like long-term unemployment benefits or social assistance (Biffl 2017:163).

The current migration discussion focusses on immigration only, even though Austria has been a country with large numbers of emigrants for many decades. During the nineteenth and the early twentieth century, most notably during World War II, many persons emigrated voluntarily or were forced to do so. Also, during the first years after World War II, not all persons displaced from Eastern Europe remained in Austria, but many moved on, mostly overseas.

Currently, no exact information is available on the number of Austrian citizens living abroad. The Ministry of Foreign Affairs estimates that in July 2018, 583,700 Austrian nationals lived abroad, 437,400 of whom in Europe. The main countries of destination are Germany (261,000 persons), Switzerland (65,000), the United States (US, 36,000) and Australia and United Kingdom (UK, 25,000 each).<sup>5</sup> These numbers might rise during the next years. Between 2008 and 2017, on average, 22,000 Austrians emigrated per year, while on average, 15,500 Austrians returned to Austria.<sup>6</sup> In the public discussion, current emigration from Austria concentrates on brain drain, often related to the medical profession.

## 2.2 Migration and Social Protection in Austria

Coverage of social insurance in Austria is quite high as more than 99% of all (legal) inhabitants have health insurance. This is due to a combination of factors including compulsory insurance against several social risks (unemployment, incapacity to work due to illness or accident, pension) for most types of paid work, comprehensive possibilities to cover economically dependent family members, possibility for some persons to continue coverage on a voluntary basis, and compulsory coverage with health insurance for pensioners and most unemployed persons. Compulsory insurance coverage is linked to current or former legal employment exceeding certain thresholds and access to legal employment is restricted for non-EU/EEA/Swiss citizens. Tax-financed benefits usually require a residence permit, which again depends on legal employment or other types of regular income, and it is required that the recipient's usual place of residence has been in Austria, regardless of his/her nationality.

<sup>5</sup> [http://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bevoelkerung/internationale\\_uebersicht/036450.html](http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/internationale_uebersicht/036450.html). Accessed 26 March 2019.

<sup>6</sup> Statistik Austria. (2018). *Wanderungsstatistik*. [https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bevoelkerung/wanderungen/wanderungen\\_mit\\_dem\\_ausland\\_aussenwanderungen/index.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/wanderungen/wanderungen_mit_dem_ausland_aussenwanderungen/index.html). Accessed 26 March 2019.

## 2.2.1 *Unemployment*

The Austrian unemployment insurance scheme consists of two consecutive systems of unemployment benefit (*Arbeitslosengeld*) and unemployment assistance (*Notstandshilfe*<sup>7</sup>), with exhaustion of the former being an eligibility criterion for the latter. Eligibility for benefits requires a minimum number of contributions: for first time applicants, 12 months within the last 2 years; for persons who already received benefits from the scheme, seven contribution months during the last year, with lower requirements for persons younger than 25 years<sup>8</sup>. Employees earning more than 438,05 EUR/month (2018; *Geringfügigkeitsgrenze*<sup>9</sup>) are due to compulsory full insurance (i.e. all four insurance pillars: work accidents, unemployment, health and pension). Self-employed persons can voluntarily choose to join the unemployment insurance scheme<sup>10</sup>.

Unemployment benefits generally yield 55% of the recipient's last earned income and are usually granted for up to 20 weeks (extended to 52 weeks depending on age and prior insurance or to 4 years in exceptional cases). Unemployment assistance yields 92% of the last unemployment benefit or 95% if the benefit is below the threshold for equalisation allowance and is granted for 52 weeks. It can be applied for again as long as unemployment persists. Both payment schemes are tied to registration at the AMS and the jobseeker's ability and willingness to work, which are expressed by preparedness to accept AMS job offers. Lack of cooperation can be sanctioned with temporary revocation of the payments. Unemployment assistance is means-tested and since July 2018, only the applicant's own income is taken into account.

The access to unemployment benefits is not conditioned by applicants' nationality, hence EU and non-EU foreigners can claim these benefits under the same conditions as national residents. Austrians residing abroad are not entitled to claim unemployment benefits from Austria, independently of their country of residence. While receiving unemployment benefits, travel to any other country is allowed for job search, training abroad or family affairs and restricted to a maximum of 3 months.

As explained, legal employment in Austria implies legal residence and holding a working permit. EU citizens have advantages in gaining a residence and working permit due to their right of unrestricted free movement for job search. The period of

<sup>7</sup>Help.gv.at. (2018a). *Notstandshilfe – Ruhens*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/361/Seite.3610021.html>. Accessed 16 April 2018.

<sup>8</sup>Kammer für Arbeiter und Angestellte für Wien (2017). *Arbeitslos – Was nun?*. [https://media.arbeiterkammer.at/wien/PDF/Publikationen/ArbeitundRecht/Arbeitslos\\_was\\_nun\\_2017.pdf](https://media.arbeiterkammer.at/wien/PDF/Publikationen/ArbeitundRecht/Arbeitslos_was_nun_2017.pdf). Accessed 13 Apr 2018.

<sup>9</sup>Help.gv.at. (2018d). *Begriffslexikon – Geringfügigkeitsgrenze*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/99/Seite.990119.html>. Accessed 9 May 2018.

<sup>10</sup>WGKK. (2018). *Arbeitslosenversicherungsbeitrag bei geringem Einkommen*. <https://www.wgkk.at/portal27/wgkkgdportal/content?contentid=10007.724681&viewmode=content&portal:componentId=gtndd7d8efd-b0a7-42fe-937c-b7f99005e756>. Accessed 13 April 2018.

prior contribution in EU/EEA and Switzerland are also taken into account when accessing unemployment benefits in Austria: as long as a person has contributed for a sufficient number of months into any unemployment insurance scheme in these countries, it suffices to have been employed for at least 1 day in Austria to obtain Austrian unemployment benefits. The totalisation of periods of contribution to foreign social security systems is also provided in the bilateral agreements with non-EU countries, such as Serbia, Turkey and Bosnia and Herzegovina.<sup>11</sup> Apart from these cases, however, the Austrian unemployment insurance scheme treats nationals and (EU and non-EU) foreigners equally.

## 2.2.2 *Health Care*

In the private sector, employers deduct 3.87% of the employee's gross wage, add their employer's contribution of 3.78%, and transfer the corresponding sum to the institution responsible for coverage. Coverage continues during unemployment and retirement. While residing in Austria, in the same household and not covered via their own contributions, dependents can also be covered free of charge.

When first covered by a sickness fund (usually at birth), a so-called e-Card is issued, stating the individual's name and social security number. To claim health care services in kind, one needs only the e-Card and some ID document. The benefits are usually provided free of charge or for a small co-payment. Coverage for health care starts on the first day of employment, independently of the prior residence and employment status.

Coverage for work accidents in the private sector is organized in a specialised insurance organisation, *Allgemeine Unfallversicherungsanstalt* (AUVA). Coverage of accident insurance is compulsory also for employment below the minimum threshold applicable to other branches of insurance.

If one's working capacity has been permanently reduced by at least 50%, one can apply for disability pension. The form for the formal application contains detailed questions regarding the tasks fulfilled in all jobs held during the last 15 years. Proof of employment and wage should be already available at the insurer due to the compulsory and/or voluntary pension insurance. Eligibility for disability pension requires 60 contribution months if the applicant is younger than 50 years. Austrians receiving disability pension can move abroad and still draw the Austrian pension.

Health care benefits and disability benefits are earned via payment of contributions. Cash benefits for incapacity to work are related to the contribution base and there is no means-testing. The definition of covered health benefits in kind is very broad. Breadth and depth of coverage do not differ between persons with higher and lower contributions. This holds for all health-related benefits discussed above.

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<sup>11</sup> AIVG; AMS (2018a); BGBI. (2000, Turkey), (2001, Bosnia and Herzegovina), (2002, Serbia); Help.gv.at (2018d); NAG § 8, 9, 51.

Achieving legal employment is thus the most important obstacle for health care coverage of foreigners willing to work in Austria and their dependents. Furthermore, NAG §11(2) 3 states that the permission to reside in Austria can only be granted if the person is fully covered by a health insurance scheme that provides services in Austria. Consequently, lack of health insurance is not much of a problem for legal residents in Austria, but rather can be a barrier to achieve legal residence status.

### 2.2.3 *Pensions*

Austria grants two types of old-age pensions: contributory and non-contributory. The general principle of the Austrian retirement scheme is to maintain the standard of living. While all private employees are covered by the ASVG through one insurer (*Pensionsversicherungsanstalt – PVA*), there are separate laws and insurers for other employment groups (Table 2.1). Pensions are financed in the pay-as-you-go logic from contributions between the same minimum and maximum thresholds as in health insurance. Employers subtract 10.25% of gross income as employee's contribution, add 12.55% as employer's contribution, and transmit the sum to PVA. In addition to payroll contributions, ASVG specifies certain Government contributions, e.g. for persons with defined care obligations for small children or relatives with severe care needs, and for persons doing their military service. The Government is financing the *Ausgleichszulage* (non-contributory allowance for pensions below a specified income threshold), according to the revenue equalization act (*Finanzausgleichsgesetz* 2017 §2). When the pension insurance's income from contributions does not cover the total pension expenditure, the Government is legally obliged to cover the difference (*Ausfallshaftung des Bundes*).

Currently, the standard retirement age is 65 years for men and 60 years for women. Between 2024 and 2033, the standard retirement age of women will gradually be lifted to the same level as that for men. Retiring before the standard retirement age has been possible for – and frequently done by – persons with many contributory years but results in financial reductions of the pension. Individuals who work even after reaching the standard retirement age achieve a bonus. The minimum number of insurance years for being granted a pension is 15 years, and some non-contributory periods are recognized for the calculation of insurance months<sup>12</sup>.

Individual pension accounts have been introduced in 2014. All earnings with compulsory pension insurance are taken into account for calculating the pension

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<sup>12</sup>This includes: (1) periods when receiving unemployment benefit, payment for sick leave or from accident insurance; a maximum of 24 months per dependent child. These periods are credited for all EU/EEA/CH nationals fulfilling the necessary requirements. (2) For Austrian nationals only, times of being soldier, prisoner, in hospital care or disabled, all related to WW II, or temporarily emigrated due to NAZI prosecution up to 1945, and times of military service are recognised. (ASVG § 227, 228). For a defined number of secondary and tertiary education years, contribution months can be bought.

and contribution months to foreign pension schemes are also considered. If the qualifying period is reached with Austrian months alone, then calculation is as if also contribution months in EU/EEA/Switzerland had been worked in Austria, unless inclusion of foreign months is beneficial for the pensioner. If foreign months are counted to reach the qualifying period, payments are reduced in proportion of the foreign to the Austrian months. For third-country nationals, only Austrian months and contributions are used to calculate the pension. In general, Austria pays pension only for contributions into Austrian pension funds, but requires that foreign contributions are mentioned when applying for pension benefits. Benefits from foreign insurers are paid directly from abroad to the beneficiary. Receiving the pension abroad in case of permanently moving to a foreign country is possible under the same conditions as for resident nationals.

The non-contributory pension (*Ausgleichszulage*, equalization allowance) is intended to prevent poverty in old age. Each pension application includes the check whether the pension income is below a certain threshold, which depends on household composition. All income from property, assets or pensions from Austria or abroad have to be reported.<sup>13</sup> Eligibility for the allowance requires that the centre of living and usual place of residence is in Austria (both for citizens and non-citizens), and that an Austrian/EU/EEA/Swiss pension is received. It is not possible to export this allowance to other countries. In cases of doubt, the insurer can request documentation for the usual place of living. Furthermore, NAG § 11 states that no residence permit can be granted if the residence might become a financial burden for the municipality. Such a burden is assumed if the income is below the eligibility thresholds. The law states explicitly that benefits conditional upon residence in Austria – like *Ausgleichszulage* – cannot be included in the calculation of the necessary income.

#### 2.2.4 Family Benefits

There are several types of family-related benefits in Austria. Regarding maternity benefits, women are not permitted to work during 8 weeks before the calculated birthday of their child until 8 weeks after the child's actual birth.<sup>14</sup> Employed women receive a cash benefit (*Wochengeld*) that amounts to the average earnings of the last 3 months and is financed from a special fund regulated by the Family Burden Balancing Act (*Familienlastenausgleichsgesetz* 1967). *Wochengeld* is due even if there is only 1 month of employment at the cut-off date for the benefit or if the mother has been employed for at least 3 months at conception, but is not employed at 8 weeks before the calculated birth, unless it was her who terminated the employment.<sup>15</sup> Access to *Wochengeld* does not depend on the place of residence or the

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<sup>13</sup> ASVG § 296 (1).

<sup>14</sup> MSchG 1979.

<sup>15</sup> ASVG § 162.

mother's nationality. Hence, EU and non-EU foreign residents can access maternity benefits in Austria under exactly the same conditions as those applied for resident nationals. The benefit is exportable and can be accessed by nationals residing abroad if they fulfil the necessary employment conditions.

For fathers of newborn children, Austria provides the legal concept of "family time" (*Familienzeit*) consisting of 1 month of unpaid leave after childbirth or the entry of a foster/adopted child into the family.<sup>16</sup> In many industries, a father's possibility to consume *Familienzeit* depends on the employer's good will. Further requirements for *Familienzeit* are: residence and centre of life in Austria in the same household with the child and the other parent; eligibility for child benefits; at least 182 days of employment with compulsory health and pension insurance in Austria, and intention to return to the same workplace after family time. The child's country of birth is irrelevant, as long as both parents and child have a common legal residence during the *Familienzeit*, and the father has been working (implying a working permit) in Austria. Even employment in other EU/EEA countries, Switzerland or countries with bilateral agreements is not sufficient for eligibility.<sup>17</sup> Furthermore, since residence has to be in Austria, export of the benefit is not possible.

As for parental benefits, employed mothers have a right to paid leave until the day before the child's second birthday, which however can be shared with the father. The duration can be further extended if a part-time absence from work is chosen instead of full-time, and certain income thresholds of the parent on leave are not exceeded. If both parents take leave, they can achieve a total of 1063 days after birth, of which between 91 and 212 days have to be consumed by the other partner. As for cash benefits, parents can choose between two basic schemes: a flat-rate scheme for mothers without own income, and an income-dependent scheme in which benefits cannot be received for longer than 1 year after birth. In both schemes, the centre of living of parents and child must remain in Austria and they must live in the same household. EU and non-EU foreigners residing in Austria have the same access to parental benefits as national citizens.

Families with children usually receive family support (*Familienbeihilfe*<sup>18</sup>), independently of the employment status and prior contributions. *Familienbeihilfe* is granted until the child's 18th birthday (or the 25th birthday under certain circumstances). During receipt, the child's own taxable income must not exceed 10,000€/year. While Austrian citizenship is not an eligibility requirement for parent or child,

<sup>16</sup> Help.gv.at. (2018). *Familienzeitbonus für Väter bei Geburten ab 1. März 2017*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/8/Seite.080623.html>. Accessed 2 May 2018.

<sup>17</sup> In a court case regarding a similar scheme, namely income-dependent parental benefits, the Austrian High Court decided that the non-consideration of employment time in other EU-countries represents a violation of EU-law. This might imply that also in the case of the family time bonus there actually exists a claim for fathers having worked abroad. However, such a legal decision has not been made yet. (OGH (2015). *Einkommensabhängiges Kinderbetreuungsgeld auch für Grenzgänger*. <http://www.ogh.gv.at/entscheidungen/entscheidungen-ogh/einkommensabhaengiges-kinderbetreuungsgeld-auch-fuer-grenzgaenger/>. Accessed 9 May 2018).

<sup>18</sup> Help.gv.at. (2018). *Familienbeihilfe – Beantragung*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/8/Seite.080711.html>. Accessed 30 April 2018.

legal residence in Austria is. If parents live in separate households, the benefit is granted to the person in whose household the child is living or to the person bearing the main economic burden of caring for the child. This implies that recipient(s) can receive family support even if the child physically lives in the EU/EEA/Switzerland, as long as the main financier of the child's livelihood resides in Austria. However, eligibility ceases if the child moves to a third country.

A claim for a similar foreign benefit eliminates eligibility for Austrian family support, but adjustment payments are possible. Due to the EU Regulation 883/2004, cross-border commuters and EU/EEA/Swiss citizens in general have access to Austrian family benefits if the main source of family income is in Austria<sup>19</sup>. Austrian citizens living and working abroad are not eligible for Austrian family support.

In January 2018, the Austrian Parliament decided to apply an index to *Familienbeihilfe* paid for children residing in a different EU/EEA country or in Switzerland, thus making the level dependent on the cost of living in the country of residence. This indexation has come into force on 1st of January 2019, triggering large dispute in Austria and Brussels regarding its compatibility with the EU Regulation 883/2004. On 24th of January 2019, the European Commission has opened an infringement procedure against Austria.<sup>20</sup> Apart from cases regulated by EU law, the only country with an existing bilateral agreement regulating access to family support is Israel: persons employed in Israel but residing in Austria have access to Austrian family benefits.<sup>21</sup>

## 2.2.5 *Guaranteed Minimum Resources*

Guaranteed minimum resources (*Sozialhilfe*, before 2020: *Bedarfsorientierte Mindestsicherung*<sup>22</sup>) is a welfare benefit scheme that represents a safety net of the last resort. It is applicable to persons who are not eligible to unemployment benefits or whose income from these benefits is below the household-specific equalization allowance. It is subject to state (*Bundesländer*) legislation, introducing some extent of variation across states. However, the intention to achieve more geographical equity led to a reform on the federal level in April 2019, which defined maximum

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<sup>19</sup> WKO (2018). *Kinderbetreuungsgeld und Familienbeihilfe für EU/EWR- und Schweizer Bürger*. <https://www.wko.at/service/arbeitsrecht-sozialrecht/Kinderbetreuungsgeld-und-Familienbeihilfe-fuer-EU-Buerger.html>. Accessed 30 Apr 2018.

<sup>20</sup> European Commission. (2019). Indexation of family benefits: Commission opens infringement procedure against Austria. [http://europa.eu/rapid/press-release\\_IP-19-463\\_en.htm](http://europa.eu/rapid/press-release_IP-19-463_en.htm). Accessed 6 March 2019.

<sup>21</sup> BGBI. (1975); FLAG § 2–5, 8; NAG § 8, 9; WKO (2018).

<sup>22</sup> AMS (2018). *Bedarfsorientierte Mindestsicherung*. <http://www.ams.at/service-arbeitsuchende/bedarfsorientierte-mindestsicherung>. Accessed 23 April 2018.

See also: [Oesterreich.gv.at \(2020\). Allgemeines zur Sozialhilfe/Mindestsicherung](https://www.oesterreich.gv.at/2020/Allgemeines-zur-Sozialhilfe/Mindestsicherung), <https://www.oesterreich.gv.at/themen/soziales/armut/3/2/Seite.1693914.html>. Accessed 19 March 2020.

benefit rates for adults depending on household composition. Provisions regarding regressive additional benefits for families with children and minimum language requirements for eligibility have been revoked by the Constitutional Court on 12th of December 2019.

Several groups of persons are eligible to guaranteed minimum resources: Austrian citizens, persons entitled to asylum or subsidiary protection (but not in all *Bundesländer*), EU citizens residing in Austria for employment purposes, holders of a permanent residence permit and persons deriving their entitlement from their relationship to another entitled person (e.g. spouse, civil partner). ‘EU citizens residing in Austria for employment purposes’ refers to the legal concept of employment property (*Erwerbstätigeneigenschaft*). This means one is either currently (self-) employed, temporarily not employable due to sickness or accident, or involuntarily unemployed after at least 1 month of employment and registered at AMS. Immigration to Austria with the purpose to receive guaranteed minimum resources is explicitly prohibited by law.<sup>23</sup>

To be granted guaranteed minimum resources, a person must be unable to earn his/her living, willing to accept job offers and take existing measures to escape from the economic hardship. Persons in retirement age, carers for (terminally) ill relatives and non-academic students are exempt from the obligation to accept job offers. There is no direct requirement regarding the duration of residence in Austria for foreign citizens. However, the concept of employment property indirectly demands a minimum employment time of 1 month in Austria and a permanent residence requires prior residence of at least 5 years. Some federal states have additional requirements for foreigners, such as willingness to integrate into the Austrian society (i.e. participation in language and orientation courses in Lower Austria<sup>24</sup>) or different residence requirements (residence permit for more than 4 months in Carinthia<sup>25</sup>). The benefit level depends on the recipient’s household composition. For the evaluation of the applicant’s economic situation, all household members’ income and wealth, in Austria and abroad, are taken into account. The benefit can only be granted if all wealth (save some small amount of approximately 5000 €) is spent. The receipt of guaranteed minimum resources is restricted to 12 months at most, but can be applied for again.

The take-up of guaranteed minimum resources yields no sanctions affecting renewal of the residence permits or naturalisation for foreign citizens. However, being unemployed and/or unable to meet basic material standards for living *per se* can affect these rights. Moreover, export of the benefit is not possible, regardless of the new country of residence.<sup>26</sup>

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<sup>23</sup> E.g. for Vienna, WMG §5 (2).

<sup>24</sup> See NÖ MSG.

<sup>25</sup> <https://www.klagenfurt.at/leben-in-klagenfurt/soziales/finanzielle-hilfen/mindestsicherung.html>

<sup>26</sup> NAG § 8, 9, 51, e.g. for Vienna also WMG.

## 2.2.6 *Bilateral Social Security Agreements*

Austria signed bilateral agreements on social security with several countries, including Serbia, Turkey and Bosnia and Herzegovina (the three most common origin countries of non-EU citizens residing in Austria) and the US, Canada and Australia (the three most common non-EU destination countries of Austrian nationals<sup>27</sup>). The three latter agreements are restricted to the consideration of pension insurance time only, thus insured times of (self-) employment in one country can be considered for the evaluation of pension claims in the other. The agreements with the three former countries additionally contain extensive regulations regarding the unemployment insurance time (except for Turkey), health and accident insurance for citizens/residents of the other country<sup>28</sup>. In all these agreements, regulations on the Austrian equalisation allowance are not included, and equalisation allowance is not portable.<sup>29</sup>

## 2.2.7 *Obstacles and Sanctions*

Eligibility for social security benefits in Austria does not generally depend on the applicant's nationality. On the one hand, this means that Austrians residing abroad have no basic claim on benefits just because they are Austrians. On the other hand, foreigners are not automatically excluded from access or eligible to reduced benefits only. Generally, eligibility for tax-financed benefits is tied to legal residence (and sometimes, economic activity) within Austria, and in case of insurance benefits, contribution time to an Austrian insurance system. Residence, of course, implies a valid residence permit, due to either normal immigration (employment situation in Austria), long-term residence, or eligibility to asylum or subsidiary protection. EU citizens have an advantage compared to third-country nationals due to unrestricted free movement and the legal concept of "employment property", which under some conditions, allows staying in another EU country after losing the job.

Consistent with this underlying idea of equal treatment of citizens and legal residents is the fact that there are no sanction mechanisms within the social security system that affect nationals in a different way from foreign residents. Non-cooperation with authorities (e.g. rejecting job offers from AMS while receiving unemployment benefits) can cause a temporary suspension of benefit payments, but there are – at least officially – no sanctions in place that reduce, for example, the

<sup>27</sup> Statista. (2018). *Anzahl der Ausländer in Österreich nach den zehn wichtigsten Staatsangehörigkeiten am 1. Januar 2018*. <https://de.statista.com/statistik/daten/studie/293019/umfrage/auslaender-in-oesterreich-nach-staatsangehoerigkeit/>. Accessed 18 April 2018.

<sup>28</sup> Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz (BMASGK). (2018). *Zwischenstaatliche Beziehungen Österreichs im Bereich der sozialen Sicherheit auf einen Blick*. [https://www.sozialministerium.at/cms/site/attachments/0/9/1/CH3434/CM1470041431373/abkommensuebersicht\\_1-3-18.pdf](https://www.sozialministerium.at/cms/site/attachments/0/9/1/CH3434/CM1470041431373/abkommensuebersicht_1-3-18.pdf). Accessed 20 April 2018.

<sup>29</sup> BMASGK (2018), BGBl. (1987, 1991), BGBl III (2000, 2001, 2002, 2017).

chance of family reunification or naturalisation. Unemployment benefit and assistance are designed with the intention to assist people on their way back to a financially self-sufficient life – therefore, there are no sanctions affecting the life after receipt of those benefits in any way. Yet, the lack of legal employment itself will often represent an obstacle to the renewal of a residence permit.

After the sudden break-up of the ÖVP-FPÖ coalition in spring 2019 and subsequent elections leading to an ÖVP-Green Government in January 2020, several planned reforms of the Austrian social system – which would have disadvantaged immigrants over nationals – seem to have been put on hold for now. The abolishment of unemployment assistance is less likely to be pursued in the current coalition, and core reforms of the former Government regarding guaranteed minimum resources have been overturned by the Constitutional Court. However, some of the legislative changes are still in effect and the symbolism and rhetoric, which were employed when promoting these policies, have left their marks on the public discourse. The then introduced photo on e-Cards, for instance, was advertised in social media using a story where clearly foreign-born persons were hindered from fraud by this photo ID. The indexation of *Familienbeihilfe* was often discussed in the context of migrant workers from Turkey and their children back home, neglecting the fact that third-country nationals would get these benefits only for children living in Austria.

## 2.3 Conclusions

In the Austrian welfare system, insurance benefits depend on legal employment, and access to legal employment is restricted for immigrants. Tax-financed benefits usually require a residence permit, and first issuance and extensions of residence permits for non-EU/EEA/Swiss citizens are subject to the restriction that the person will not become a financial burden for the municipality. Having proof of sufficient income and of comprehensive health insurance are thus legal prerequisites for being granted a residence permit. Only after long residence in the country, Austrian laws allow to grant a permanent residence permit. In a comparison of countries from the Organisation for Economic Cooperation and Development (OECD) over the period 1980–2010, this combination of characteristics made Austria stand out as persistently very restrictive when it comes to letting immigrants participate in the welfare state generosity (Römer 2017).

In Austria, the public discussion on migration focuses on the burden that immigration – especially, but not exclusively, from third countries – might pose for the welfare system. In the 2017 national elections, parties promising a stricter regime regarding immigration and more restrictive social and welfare benefits for non-Austrians achieved the majority, while the more immigration-friendly parties lost. Observers expect a relatively swift implementation of policies regarding immigration restrictions (Bodlos and Plescia 2018). The ÖVP-FPÖ coalition Government, although not in power anymore since spring 2019, induced some sustaining changes.

For example, child benefits, which used to be granted at the same level for children living in Austria or other EU countries, are now adjusted to the living costs in the country where the children reside. The European Commission repudiates the consistency of such a differentiated child support with current EU law and has opened an infringement procedure against Austria in January 2019.

Guaranteed minimum resources, regulated differently in the nine *Bundesländer*, have been amended with a national regulation for common standards by the former Government. While this legislation is still in effect, the Constitutional Court overturned two provisions (language requirements for eligibility and regressive maximum rates for families with children) which would have disproportionately disadvantaged immigrants. An announced reform of unemployment assistance, which might have led to its abolition, is now less likely with the new ÖVP-Green coalition. A large difference between both existing schemes is the inclusion of wealth into the means-testing for eligibility for guaranteed minimum resources. Regarding unemployment assistance, means-testing is independent from wealth, as the benefit is an insurance benefit earned via former contributions. Foreigners receiving unemployment assistance thus have an income independent from a municipality's budget, in contrast to persons receiving guaranteed minimum resources.

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# Chapter 3

## Migrants' Access to Social Protection in Belgium



Pauline Melin

### 3.1 Overview of the Welfare System and Main Migration Features in Belgium

This chapter aims to examine the conditions and procedures for accessing social benefits in Belgium. The relevance of the bilateral social security agreements with the three main countries of origin of non-EU foreigners residing in Belgium (Morocco, Turkey, Algeria) and the three main non-EU countries of destination of Belgians abroad (USA, Canada and Australia) are also discussed. The chapter identifies potential differences between nationals and non-nationals in accessing Belgian social benefits. Furthermore, it critically discusses the potential impact that the decision to migrate might have for acquiring or retaining social benefits in and from Belgium. Before answering those questions, a short overview of the main characteristics of the Belgian social security system and the migration history are provided.

#### 3.1.1 *Main Characteristics of the National Social Security System*

As many European countries, social security in Belgium developed in the nineteenth century with the Industrial Revolution. It is however in 1944 that the social security system was instituted in Belgium. With the law of 1944, the model of social assistance which was predominant during the Industrial Revolution became a subsidiary system compared to social security. The choice was then made to follow the Bismarckian model based on the principle of social insurance (Pochet and Reman

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2006). As a result, the Belgian social security system is made of a contributory system of work-based social insurance, with a residual non-contributory system of social assistance.

Between 1960 and 1970, the coverage of the Belgian social security system was extended, both in terms of beneficiaries and of benefits (Pochet and Reman 2006). The work-based social insurance system differentiates between three categories of potential beneficiaries (civil servants, employed, and self-employed workers) and comprises 7 branches of benefits (sickness and maternity benefits; accident at work and occupational diseases benefits; invalidity benefits; old-age and survivors' benefits; unemployment benefits; family benefits; and annual holidays). The non-contributory system of social assistance is based on solidarity and financed through general taxation. It aims to provide a minimum social protection to those who are involuntarily without income and cannot benefit from the work-based social insurance system. This non-contributory system includes the minimum guaranteed income (also called integration income<sup>1</sup>), the guaranteed income for the elderly,<sup>2</sup> the minimum family benefits,<sup>3</sup> and disabled persons' benefits.<sup>4</sup>

Social security is a federal competence managed by the Public Service on Social Security.<sup>5</sup> Over the last 45 years, the main changes in the Belgian social security system concern a strong decentralisation of a previously centralized unitary social security system (Béland and Lecours 2018; Jorens 2006). As a result, some aspects of the Belgian social security system have been transferred either to the Regions or the Community (for a recent overview of the different transfers put in a historical perspective, see Dumont 2015). The most notable example is the transfer of family benefits from the federal level to the Community level (i.e. the Walloon Region, the Flemish Community, the German Community, and COCOM<sup>6</sup> for the Brussels Region).<sup>7</sup> Although this transfer took place on July 2014, the Communities and Regions had until December 2019 to organise the management of beneficiaries' files and payments.

Belgian social security is financed by social security contributions, State subsidies, and VATs. For employed persons, the social security contributions are paid by the employer and the employee to the National Office for Social Security (ONSS/RSZ),<sup>8</sup> through a percentage of employee's gross salary. Each social security branch is managed by a different National Office. Sickness, maternity, paternity, and invalidity benefits are managed by the National Institute for Sickness and Invalidity

<sup>1</sup> *Revenu d'intégration sociale/leefloon.*

<sup>2</sup> *Garantie de revenus aux personnes âgées/gewaarborgd inkomen voor bejaarden.*

<sup>3</sup> *Prestations familiales garanties/gewaarborgde gezinsbijstand.*

<sup>4</sup> *Allocations pour des personnes handicapées/tegemoetkomingen voor personen met een handicap.*

<sup>5</sup> *SPF Sécurité Sociale/FOD Sociale Zekerheid.*

<sup>6</sup> *Commission Communautaire Commune.*

<sup>7</sup> *Loi spéciale du 6 janvier 2014 relative à la sixième réforme de l'Etat, M.B., 31 janvier 2014.*

<sup>8</sup> *Office National de la Sécurité Sociale/Rijksdienst voor Sociale Zekerheid.*

Benefits (INAMI/RIZIV)<sup>9</sup> which distributes financial resources to different insurers (*mutualités*) responsible for benefits' payment. Old-age pensions and the guaranteed minimum income for elderly are handled by the National Office for Pensions (ONP/RVP).<sup>10</sup> Unemployment benefits are managed by the National Office for Employment (ONEM/RVA),<sup>11</sup> although the payment of these benefits is done either by trade unions or CAPAC.<sup>12</sup> The most relevant institution for the management and payment of family benefits is the Federal Agency for Family Benefits (FAMIFED/ FAMIFED).<sup>13</sup> Finally, the guaranteed minimum income scheme is managed and paid by the Local Centers for Social Assistance (CPAS/OCMW).<sup>14</sup>

For self-employed persons, the compulsory contributions have to be paid to private social insurance funds or to a National Auxiliary Fund, managed by the National Insurance Institute for the Self-Employed (INASTI/RSVZ).<sup>15</sup> Self-employed persons are covered by 5 branches of social security (sickness, invalidity, family, maternity benefits, and pensions).

### 3.1.2 *Migration History and Key Policy Developments*

The migration history of Belgium resembles the one of its neighbouring countries such as Germany or the Netherlands. After the second World War, Belgium recruited foreign workers to compensate its lack of labour force. From 1948 until 1958, the great majority of the foreign workers were coming from Italy (Bousetta et al. 1999). From the 1960's, Belgium put in place a 'guest-worker' policy and attracted workers from Southern Europe as well as from Morocco and Turkey. In 1974, the decision was made to stop recruiting migrant workers (Martiniello 2003). In the 1980's, the stock of foreigners stabilized due to the recruitment stop policy and due to the increase in naturalisation rates (Jacobs et al. 2002; Bousetta and Bernès 2009). Since then, a large share of migration from third countries happens through the route of family reunification.<sup>16</sup>

In the last national census in 2011, the foreign population accounted for 10,49% of the total population. According to Eurostat, in 2017, foreigners accounted for

<sup>9</sup> Institut National d'Assurance Maladie-Invalidité/Rijksinstituut voor Ziekte-en Invaliditeitsverzekering.

<sup>10</sup> Office National des Pensions/Rijksdienst Voor Pensioenen.

<sup>11</sup> Office National de l'Emploi/Rijksdienst voor arbeidsvoorziening.

<sup>12</sup> Caisse Auxiliaire de Paiement des Allocations de Chômage/Hulpkas voor Werkloosheidsuitkeringen.

<sup>13</sup> Agence Fédérale pour les Allocations Familiales/Federaal Agentschap voor de Kinderbijslag.

<sup>14</sup> Centre Public d'Action Sociale/Openbaar Centrum voor Maatschappelijk Welzijn.

<sup>15</sup> Institut National d'Assurances Sociales pour Travailleurs Indépendants/ Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen.

<sup>16</sup> European Migration Network (EMN). *Family reunification with third country national sponsors in Belgium*. July 2017. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/02a\\_belgium\\_family\\_reunification\\_en\\_0.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/02a_belgium_family_reunification_en_0.pdf). Accessed 20 March 2019.

14% of the total population in Belgium (Eurostat 2018). Out of these foreigners, the large majority (up to 66%) comes from EU Member States (Eurostat 2018). French (18%) and Dutch (17%) citizens are particularly represented. Italian (18%), Romanian (9%), Polish (8%), Spanish (7%) and Portuguese (5%) citizens also account for important stock of the foreign population (Eurostat 2018). Concerning non-EU Member States, the largest groups of the foreign population in Belgium come from Morocco (6%) and Turkey (3%). According to the Belgian Statistics Office, 384.657 foreigners were employed or self-employed, 50.815 were receiving unemployment benefits, and 716.489 were economically inactive (StatBel 2016). Finally, the proportion of EU citizens who are economically active is higher than the one of non-EU foreigners (Vintila et al. 2018).

Finally, it should be said that in 2017, emigration from Belgium represented 119.382 persons (StatBel 2018). Furthermore, numbers from the consular report that 471.401 Belgians were registered abroad in July 2018. The main countries where the Belgians are residing are all EU countries: France (132.557), the Netherlands (38.824), Spain (28.947), the United Kingdom (28.293) and Germany (28.008).

## 3.2 Migration and Social Protection in Belgium

Access to social benefits in Belgium is not conditional upon nationality. Moreover, very few benefits require a certain number of years of prior residence in the country. One example in this regard is the minimum guaranteed income for the elderly which is only accessible for Belgian nationals and citizens of some countries, and requires a 10-years residence in Belgium (out of which 5 years of effective and uninterrupted residence). This particularity is not surprising as it is also a non-contributory benefit financed through general taxation. For all other benefits described in this chapter, the relevant eligibility criterion is the contribution to the Belgian social security system. Stating that residence is not relevant would, however, be misleading. For most benefits, residence in Belgium is required in the sense that most benefits are not exportable. Alternatively, if they are exportable, stringent conditions are attached or it is completely up to the discretion of the administration to decide on the possibility of exporting the benefit.

### 3.2.1 *Unemployment*

Unemployment insurance benefits are only available for employed persons,<sup>17</sup> as opposed to self-employed persons. The qualifying period of employment varies according to the age of the claimant.<sup>18</sup> There is no specific condition regarding a

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<sup>17</sup> There is no specific scheme of unemployment assistance benefits in Belgium.

<sup>18</sup> Arrêté royal portant réglementation du chômage, M.B., 25 novembre 1991, art.30.

minimum period of prior residence, although claimants must have their main residence (and reside effectively) in Belgium. Hence, national citizens residing abroad are not generally entitled to claim unemployment benefits from Belgium. Yet, there are some instances where the beneficiary will receive unemployment benefits although he/she is not residing in Belgium: 1. for annual holidays for up to 4 weeks per year; 2. for maximum 2 weeks to actively search for a job abroad, upon authorization of the competent authority; 3. for frontier workers residing abroad, but temporarily unemployed in Belgium; 4. for beneficiaries who have already used the 4 weeks of annual holidays, the competent authority may grant 4 extra weeks for voluntary work in cultural events; 5. for voluntary work for a sport event; 6. for a period determined by a ministerial decision. In addition, the export of unemployment benefits for maximum 3 months is possible if the claimant has filled in a (U2) form asking to retain unemployment benefits while moving in an European Union (EU)/ European Economic Area (EEA) country for the purpose of finding a job.<sup>19</sup>

For EU foreigners who reside in Belgium between 3 months and 5 years, actively seeking for a job and receiving unemployment benefits should not have any negative consequences on their right to reside.<sup>20</sup> Similarly, for non-EU foreigners, their right to reside should not be, in principle, negatively affected by the take-up of unemployment benefits, unless they cannot prove that they do not have sufficient resources and become a burden on the State's social assistance. Income coming from unemployment benefits can be taken into account for the 'sufficient resources' test only if they actively look for a job.<sup>21</sup> Moreover, those who apply for Belgian nationality must prove social and economic participation<sup>22</sup> and reliance on unemployment benefits might be a hurdle in showing economic participation. Stable, regular and sufficient incomes must also be proven for family reunification. However, if coupled with positive feedback on active job search, unemployment benefits are considered as sufficient resources to bring relatives via family reunification.<sup>23</sup>

Concerning the bilateral agreements concluded with third countries, it is worth mentioning that in order for the periods of contributions completed abroad to be considered by the Belgian authorities for the purpose of accessing unemployment benefits, the claimant must have worked for at least 3 months in Belgium upon return.<sup>24</sup> Furthermore, only periods of insurance completed in certain countries are taken into account, including EU Member States, Iceland, Liechtenstein, Norway,

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<sup>19</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, [2004] OJ L 166/1, art. 64.

<sup>20</sup> *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, M.B., 15 décembre 1980, art. 42 bis, para.1 and 2.

<sup>21</sup> *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, M.B., 15 décembre 1980, art. 11, para.1, 1e; art. 10, para.2; art. 10, para. 5.

<sup>22</sup> *Code de la nationalité belge*, M.B., 28 juin 1984, art.12bis.

<sup>23</sup> *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, M.B., 15 décembre 1980, art.40ter, para.1, 1e.

<sup>24</sup> Prior to 2016, only 1 day of work in Belgium upon return was sufficient.

Switzerland, Bosnia-Herzegovina, the Republic of Macedonia, Montenegro,<sup>25</sup> Turkey, Algeria, Kosovo, and San Marino. For EU Member States, Bosnia, Macedonia and Montenegro, the beneficiary's nationality does not matter, while for other countries, the beneficiary must be an EU citizen or national of one of the countries listed above.<sup>26</sup>

### 3.2.2 *Health Care*

Sickness in kind benefits are available to any salaried worker and assimilated categories legally residing in Belgium. This implies that unemployed persons, individuals on maternity leave or those registered in the national registry can also access in kind benefits in case of sickness.<sup>27</sup> The registration in the national registry would mainly concern non-nationals after 3 months of stay in Belgium. Partners, cohabitants, children of less than 25 years old and parents also have access, under certain conditions, to benefits in kind.

To access benefits in kind, individuals must be affiliated with a sickness insurer (*caisse de maladie*) and pay a minimum contribution during 6 months. There are numerous derogations<sup>28</sup> to this 6-months period and, in most cases, nationals do benefit from one of these derogations. EU foreigners can also benefit from these derogations if they were insured in another EU country. Hence, this 6-months period mainly applies for non-EU foreigners. The sickness in kind benefits work as a reimbursement system where the patient is reimbursed 75% of the conventional honorary. There is a flat-rate payment by the patient for any day spent in the hospital for which 75% of the doctor costs are then reimbursed by the sickness insurers and a lump-sum is granted for the costs of medicines.

Cash benefits in case of sickness (also called incapacity benefits) are granted based on three conditions: having ceased all activities because of injury or functional disorder resulting in a reduction of earning capacity of at least 66%; having paid the minimum amount of contributions, and having prior insurance for at least 180 working days out of 12 months preceding the incapacity.<sup>29</sup> While there is no

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<sup>25</sup> It should be noted that for Macedonia, Bosnia and Montenegro the period of 3 months is extended to 6 months over the last 12 months prior asking the unemployment benefits. This information has been retrieved through the ONEM website: [http://www.onem.be/fr/documentation/feuille-info/t31#h2\\_1](http://www.onem.be/fr/documentation/feuille-info/t31#h2_1), accessed 20 March 2019.

<sup>26</sup> ONEM website: [http://www.onem.be/fr/documentation/feuille-info/t31#h2\\_1](http://www.onem.be/fr/documentation/feuille-info/t31#h2_1), accessed 20 March 2019.

<sup>27</sup> *Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994, M.B., 14 juillet 1994, art.32.*

<sup>28</sup> *Arrêté royal du 3 juillet 1996 portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, M.B., 3 juillet 1996, art.130.*

<sup>29</sup> *Arrêté royal du 3 juillet 1996 portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, M.B., 3 juillet 1996, art.203.*

difference between nationals and foreigners in accessing cash benefits, there is with regard to the export. For temporary stay in an EU/EEA country, the person receiving sickness benefits from Belgium should inform the sickness insurer. Whereas for temporary stay in a non-EU/EEA country, an authorisation from the doctor would be needed. There is no possibility to retain sickness benefits when moving abroad permanently.

Sickness cash benefits can be granted for 12 months after which invalidity benefits can be claimed if the beneficiary is still unable to work. Invalidity benefits are calculated based on previous earnings and the family situation of the invalid person.<sup>30</sup> They are available for all persons bound by a work contract as long as there is a reduction of capacity for work of at least 66% and the person has contributed for at least 180 working days during the last 12 months prior to the incapacity. Whereas individuals receiving invalidity benefits must simply inform their *mutualité* in case of temporary stays in an EU/EEA country, they must receive an authorisation from the doctor for short stays outside the EU/EEA. If an individual decides to transfer his/her residence to an EU/EEA country, the authorisation of the doctor is not required although the person should communicate the change of residence to the competent authority. The control of the invalidity status will then take place in the country of residence. Invalidity benefits are lost if the person moves to a non-EU/EEA country, unless the new country of residence has concluded a bilateral agreement with Belgium including invalidity benefits.<sup>31</sup>

As for the coverage of health-related benefits in bilateral social security agreements, it is worth mentioning that the agreements with the USA, Canada and Australia are worded very similarly and only concern invalidity benefits. The agreements with Morocco, Turkey, and Algeria cover sickness benefits in kind, in cash and invalidity benefits. For invalidity benefits, all agreements provide for aggregation of periods of insurance. Furthermore, the agreements with USA, Canada and Australia contain a provision stating that residence conditions should not be attached to the grant and payment of the benefits; and that invalidity benefits should be granted under the same conditions by Belgium for American, Canadian and Australian nationals residing in third countries as it would for Belgian nationals, and vice versa by USA, Canada and Australia for Belgian nationals residing in third countries. That being said, those two elements (i.e. export to one of the Contracting State and export to a third country) do not apply to American nationals who have not been subject to the Belgian social security system for at least 18 months prior to the incapacity. The agreement with Turkey specifically mentions that beneficiaries can receive invalidity benefits when residing in the other Contracting State only if such transfer of residence has been authorised by the competent institution in the Contracting State. For sickness in kind benefits, the agreements with Algeria, Morocco and Turkey ensure that workers and family members are granted access to

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<sup>30</sup> Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994, M.B., 14 juillet 1994, art.93.

<sup>31</sup> Website of the *Mutualité chrétienne*: <https://www.mc.be/que-faire-en-cas-de/etranger/invalidite>, accessed 20 March 2019.

these benefits in case of stay or residence in the other country. For cash benefits, the agreements with Algeria, Morocco and Turkey provide that if a national of a Contracting State is insured in that State and transfers his/her residence to the other Contracting State, that person should be able to continue receiving sickness cash benefits from the first Contracting State if its institutions authorized the residence transfer.

### 3.2.3 *Pensions*

Old-age contributory pensions in Belgium are calculated based on the years of contributions, the previous earnings and the family status.<sup>32</sup> There is no minimum period of contributions required, although a minimum amount per year of contribution is only granted after 15 years. A guaranteed minimum pension is available for at least 2/3 of a complete career, i.e. after 30 years of contributions. For every year of contribution, the person must have been working 156 days of full time work and will be entitled to a bigger amount if he/she achieves 208 full time working days per year. The standard retirement age is 65 years old.

There is no difference in terms of the conditions of access to old-age pensions between nationals, EU foreigners, and non-EU foreigners, although some differences can be identified in terms of pension exportability. Belgian and EU nationals must send a yearly life certificate to the competent authorities (except if they live in France, Germany or the Netherlands where there is an electronic data exchange between authorities). In principle, old-age pensions are not exportable for non-EU foreigners,<sup>33</sup> except if they are legally residing in an EU country<sup>34</sup> (except Denmark), are miner workers<sup>35</sup> or are covered by bilateral agreements allowing export of pension.<sup>36</sup> The payment of the pension can be done to a Belgian/EEA bank account. The pension can also be transferred to a non-EEA bank account if the person is legally

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<sup>32</sup>Arrêté royal portant exécution des articles 15, 16 et 17 de la loi du 26 juillet 1996 portant modernisation de la sécurité sociale et assurant la viabilité des régimes légaux des pensions, M.B., 23 décembre 1996, art.5.

<sup>33</sup>Arrêté royal N50 relatif à la pension de retraite et de survie des travailleurs salariés, M.B., 24 octobre 1967, art. 27.

<sup>34</sup>Which means that the person falls under the scope Regulation 1231/2010. Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, [2010] OJ L 344/1.

<sup>35</sup>But then the amount of the pension is up to 80% of the full amount the person would receive if he/she stayed in Belgium.

<sup>36</sup>Information retrieved from the website of SPF Pension: <http://www.onprvp.fgov.be/FR/futur/foreigner/paymentpension/Pages/default.aspx>, accessed 20 March 2019.

residing in that country. In any case, transfer to a non-Belgian bank account needs to be communicated to the competent authority 2 months before the payment.<sup>37</sup>

The bilateral agreements with Morocco, Turkey, Algeria, USA, Canada, and Australia provide for the principle of aggregation of periods of insurance and stipulate that old-age benefits granted by one country cannot be suspended or withdrawn on grounds of the beneficiary staying or residing in the territory of the other country. The agreements with Turkey and USA further allow for the export of old-age benefits on the territory of third-countries in the same conditions as nationals of the country competent for granting those benefits. However, the agreement with USA clarifies that those two elements (i.e. export to one of the Contracting State and a third country) do not apply to American nationals who have been subject to the Belgian social security system for less than 18 months.

After 65 years old, individuals who have no or insufficient pensions are also eligible for a special scheme of minimum guaranteed income for the elderly.<sup>38</sup> This non-contributory pension is available only for Belgian/EU/EEA/European Free Trade Agreement (EFTA)/Swiss nationals and citizens of countries with whom Belgium has a bilateral agreement covering this specific scheme. In order to obtain this benefit, individuals must have resided in Belgium for at least 10 years including at least 5 years of effective and uninterrupted residence.<sup>39</sup> From time to time, SPF Pensions checks the residence in Belgium by sending a letter to the beneficiary which needs to be returned within 21 days. Despite this strict residence condition, there is the possibility to stay abroad for up to 30 days per year while continuing to receive the minimum guaranteed income from Belgium. Yet, this pension is lost if individuals reside abroad for stays of more than six consecutive months or when they are no longer registered in a Belgian municipality (*commune*).

### 3.2.4 Family Benefits

There are two conditions to access maternity benefits in Belgium: having completed a waiting period of 6 months (from the start of the work until the person asks for maternity benefits) and having worked for at least 120 days during those 6 months.<sup>40</sup> Residence is not a requirement and foreign residents can access maternity benefits under the same conditions as their national counterparts. The benefits are granted for 15 weeks (with extensions in exceptional cases) and the amount is calculated based on the salary (or flat rate for self-employed or unemployed). Non-resident citizens who are not subject to Belgian social security cannot ask for maternity

<sup>37</sup> *Ibid.*

<sup>38</sup> *Loi instituant la garantie de revenus aux personnes âgées*, M.B., 22 mars 2001, art.3.

<sup>39</sup> See also: *Arrêté royal portant règlement général en matière de garantie de revenus aux personnes âgées*, M.B., 23 mai 2001, Art. 42, para.1.

<sup>40</sup> *Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994*, M.B., 14 juillet 1994, art.116/1.

benefits from Belgium. Paternity benefits can be granted to employees only, generally under the same conditions as maternity benefits, although their duration is of only 10 days.<sup>41</sup>

Parental benefits are individual benefits available only to national or foreign employees independently of the country of birth or residence of their child. Eligible claimants must have worked for at least 12 months out of the last 15 months before claiming parental benefits<sup>42</sup> and the child should be less than 12 years old.<sup>43</sup> Parental benefits are flat-rate but depending on the region, the beneficiary might receive additional sums.<sup>44</sup> Parental benefits are granted for a maximum of 4 months when claimants stop completely to work,<sup>45</sup> 8 months if the person stops working part-time, and 20 months for those who reduce their working time by 1/5. Individuals who temporarily leave the country can continue to receive parental benefits. If the person leaves permanently Belgium, the benefits will only be received if the person lives in an EU/EEA country.

Child benefits are also available to individuals working in Belgium (although there is no minimum period of contributions required)<sup>46</sup> if the child resides and studies in Belgium (or the child resides and/or studies in an EU/EEA country or in a country with whom Belgium has concluded a bilateral agreement).<sup>47</sup> Individuals can receive family benefits until the child reaches 18 years old or 25 years old if he/she continues to study. The amount received depends on the number of children, household composition, and claimants' income. Child benefits can be exported temporarily provided that recipients continue to be affiliated to the Belgian social security system and the child continues to reside and study in Belgium. For permanent stays abroad, family benefits are only paid to the person who stays affiliated to the Belgian social security (generally posted workers).

The bilateral agreements with USA, Canada and Australia only cite family and maternity benefits for the purpose of the rules concerning the situations when a person is subject to a particular legislation. For example, according to the *lex loci laboris* rule, a person working in Belgium would be subject to the Belgian social security legislation (including the legislation on family benefits and maternity benefits). There is however no specific right arising from the agreements with USA,

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<sup>41</sup> *Loi relative aux contrats de travail*, M.B., 3 juillet 1978, art.30, para.2.

<sup>42</sup> *Arrêté royal relatif à l'introduction d'un droit au congé parental dans le cadre d'une interruption de la carrière professionnelle*, M.B., 29 octobre 1997, art.3 and 4.

<sup>43</sup> Previously, in the beginning of 2000, the age of the child was of 4 years old. This was changed in 2005 for 6 years old and in 2009 for 12 years old (Kil et al. 2016).

<sup>44</sup> 160 euros more in Flanders for a full-time parental leave (Kil et al. 2016).

<sup>45</sup> Information retrieved from the ONEM website: <http://www.onem.be/fr/documentation/feuille-info/t19>, accessed 20 March 2019.

<sup>46</sup> *Loi générale relative aux allocations familiales* (LGAF), M.B., 19 décembre 1939, art. 51; *Loi portant modification des lois coordonnées du 19 décembre relatives aux allocations familiales pour travailleurs salariés*, M.B., 4 avril 2014.

<sup>47</sup> For some countries (Morocco, Tunisia, Turkey, Algeria and Kosovo) the number of children for whom the person can get the child benefits is 4 (Mussche et al. 2014).

Canada and Australia with regard to family-related benefits. Such specific rights are found in the agreements with Morocco, Turkey and Algeria which stipulate the principle of aggregation of periods for family benefits, and specify that persons covered by those agreements are entitled to receive family benefits for children residing in the other country. For Algerian workers in Belgium, Article 28 of the agreement provides that they should receive child benefits for children residing in Algeria based on Algerian law and not the Belgian law. The agreement with Algeria also states the possibility to retain maternity benefits when the residence is transferred back to Algeria, upon authorization from the competent authority.

### 3.2.5 *Guaranteed Minimum Resources*

There are several eligibility conditions for accessing the guaranteed minimum income<sup>48</sup> ('integration income'/*revenu d'intégration/leefloon*) in Belgium.<sup>49</sup> First, the person must be an adult or assimilated and have his/her effective residence in Belgium. Second, claimants must be either: Belgian nationals, EU citizens (or family members of an EU citizen) with a legal residence in Belgium for more than 3 months, foreigners registered in the population registry, stateless persons or individuals holding the refugee status or subsidiary protection in accordance with article 49 on the law from 1980 on foreigners. Third, the person is without sufficient resources and willing to work (with exceptions). Fourth, the person has asked for his/her social security benefits either in accordance with the Belgian legislation or with any other country's legislation. In addition, the administration might also require that the person exhausts his/her right to maintenance owed to him/her by other people.

The effective residence condition of a legal and permanent stay in Belgium<sup>50</sup> applies for everyone, either nationals or foreigners. There is no need to have a physical residence in Belgium but it is important to be present and allowed to stay in Belgium. In that sense, the law is meant to also include people who do not have a home but are allowed to stay in Belgium (homeless persons, for example). This condition of the legal and permanent stay in Belgium also implies that there is no possibility to export this benefit, except for temporary stays abroad of maximum 4 weeks per year. For stays longer than a week, the beneficiary must inform the competent administration and justify the need to go abroad. The minimum

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<sup>48</sup> It should be noted that guaranteed minimum income refers here solely to *revenu d'intégration/leefloon* and not to *aide sociale*. *Aide sociale* has a broader scope than *revenu d'intégration*. It can be comprised of both material and immaterial help.

<sup>49</sup> Those conditions are contained in art.3 of the law on integration income. *Loi concernant le droit à l'intégration sociale*, M.B., 26 mai 2002, art.3.

<sup>50</sup> *Arrêté royal portant règlement général en matière de droit à l'intégration sociale*, M.B., 11 juillet 2002, art.2.

guaranteed income is not covered by the bilateral agreements that Belgium has concluded with third countries.

Besides the condition of effective residence, there is a *de facto* residence requirement for non-nationals. Unlike resident nationals, EU foreigners become entitled to claim the guaranteed minimum income only after having legally resided in Belgium for at least 3 months.<sup>51</sup> Moreover, third-country nationals must be registered in the population registry, the latter being possible only after 5 years of legal residence in Belgium.<sup>52</sup> In other words, non-EU foreigners residing in Belgium for less than 5 years are not considered entitled to claim the guaranteed minimum income.

Finally, it is also worth highlighting the potential negative consequences that the take-up of this specific benefit might have on foreigners' residence permits and their naturalization in Belgium. Firstly, EU foreigners with a residence permit of more than 3 months and less than 5 years who are not employed or self-employed must prove having sufficient resources and not being a burden for the Belgian social assistance system.<sup>53</sup> Reliance on minimum guaranteed income might be considered as being a burden on States' funds<sup>54</sup> and therefore negatively affect their right to reside or the renewal of their residence permits. Secondly, when non-EU foreigners apply for minimum guaranteed income to the Public Center for Social Aid, that center has to notify the Immigration Department who can then withdraw their residence permit. Furthermore, with regard to family reunification, nationals and non-nationals have to prove sufficient and stable income and the minimum guaranteed income is not taken into account for these purposes. An economic and social participation is also required for the acquisition of the Belgian nationality and foreigners' reliance on social benefits is an element taken into account for assessing their economic participation. The economic integration criterion is fulfilled if the person worked as an employee in the past 5 years for a minimum of 468 days or has paid contributions for at least 6 quarters as a self-employed person.<sup>55</sup> Hence, recourse to minimum guaranteed income is not a prove of economic integration (quite the contrary) so it would impact negatively on the naturalization process (Mussche et al. 2014).

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<sup>51</sup> *Loi concernant le droit à l'intégration sociale*, M.B., 26 mai 2002, art.3.

<sup>52</sup> This entails the holding a long-term residence permit. *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, M.B., 15 décembre 1980, art. 17.

<sup>53</sup> *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, M.B., 15 décembre 1980, art. 40, para 4., 2<sup>e</sup>.

<sup>54</sup> Although this should not be an automatic conclusion but should be assessed on a case-by-case basis, weighting all the financial circumstances of the individual. *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, M.B., 15 décembre 1980, art. 40, para4., second last sentence.

<sup>55</sup> *Code de la nationalité belge*, M.B., 28 juin 1984, art.12bis.

### 3.3 Conclusions

Belgian social security system is mainly a work-based social insurance system complemented by a non-contributory social assistance system aimed to protect those at risk of poverty. Because it is a work-based social insurance system, the main criterion to access social security benefits is the number of years of contributions. Hence, access to social security benefits in Belgium does not depend on the nationality of the claimants.

Even though it is a contributory system, individuals may be required to prove residence in Belgium in order to obtain access to specific benefits and/or continue receiving them. This implies that most benefits are not accessible if the beneficiary moves abroad. For example, unemployment benefits require an effective residence in Belgium, although, as previously explained, there are several derogations from this general rule that do allow claimants to continue receiving the benefit after moving abroad. On the other hand, the minimum guaranteed income for the elderly requires 10 years of residence in Belgium with a minimum of least 5 years of effective and uninterrupted residence. Moreover, the minimum guaranteed income ('income integration') requires the person to be effectively residing in Belgium. Having an effective residence in Belgium implies legal and permanent stay in the country. Although this condition applies equally for both nationals and non-nationals, it has a different impact on foreigners. While nationals can be considered as effectively residing in Belgium since birth, EU foreigners will only be considered as such after 3 months of legal residence in Belgium, whereas non-EU foreigners must be registered as foreigners in the population registry which is practically possible only after 5 years of legal residence in Belgium. Consequently, EU nationals who have resided in the country for less than 3 months and non-EU foreigners residing in Belgium for less than 5 years cannot claim the guaranteed minimum income.

It is also interesting to note that bilateral social security agreements concluded with third countries often facilitate the export of benefits for nationals of the Contracting Parties. Without these agreements which stipulate the aggregation of periods of insurance, it can be doubted whether the authorities will take into account periods of contributions completed abroad in order to grant access to social benefits in Belgium. The new law on aggregation of periods for the purpose of unemployment benefits and the need to work for 3 months in Belgium upon return in order to become entitled to claim these benefits indicates that there is a tendency to restrict the access to social security benefits in Belgium.

Finally, the take-up of social benefits by foreigners might not have a direct consequence on their residence status in Belgium, but it can indirectly and negatively affect this status. In order to be resident in Belgium, EU foreigners and non-EU foreigners should have sufficient resources and should not become a burden on the State's social assistance. Income coming from unemployment benefits can be taken into account for the 'sufficient resources' test only if they actively look for a job. Furthermore, reliance on minimum guaranteed income might be considered as being a burden on States' funds and therefore impact negatively on the right to

reside or the renewal of residence permits. Even more, when non-EU foreigners apply for minimum guaranteed income to the Public Center for Social Aid, that center has to notify the Immigration Department who can then withdraw their residence permit. In addition, income coming from minimum guaranteed income are not taken into account for the ‘sufficient resources’ test that needs to be passed for family reunification. Concerning the acquisition of Belgian nationality, it is required to prove social and economic participation. The economic integration criterion is fulfilled if the person worked as an employee in the past 5 years for a minimum of 468 days or has paid social security contributions for at least 6 quarters as a self-employed person. Hence, recourse to minimum guaranteed income is not a prove of economic integration (quite the contrary) so it could impact negatively the acquisition of Belgian nationality. Similarly, reliance on unemployment benefits might be a hurdle in the process of proving the economic participation of the person.

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# Chapter 4

## Migrants' Access to Social Protection in Bulgaria



Zvezda Vankova and Dragomir Kolev Draganov

### 4.1 Overview of the National Social Security System and Main Migration Features in Bulgaria

This chapter aims to discuss the link between migration and welfare in Bulgaria by closely examining the access of resident and non-resident nationals, and resident non-nationals to different types of social benefits in the areas of unemployment, health care, family benefits, pensions, and guaranteed minimum resources.

#### 4.1.1 *Main Characteristics of the National Social Security System*

The welfare regime in Bulgaria has undergone significant changes since the late 1990s and early 2000s as a result of social, economic, political and cultural processes following the collapse of Bulgaria's communist regime and centralized planned economy (Nenovsky and Milev 2014). One of the fundamental changes in this period was the profound reform of Bulgaria's pension system. The existing at that time mono-pillar pension system was replaced by the so-called multi-pillar system combining solidarity-based non-funded pension schemes with arrangements stimulating individual savings. The reform introduced a gradual increase in the statutory retirement age, modified the new pension formula in order to match better

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contributions and benefits, and tightened access to early retirement schemes (Hristoskov 2000; 2001).

The social protection system covered mainly passive measures such as unemployment benefits and social assistance until 1996 (Mihaylova and Bratoeva-Manoleva 2016). As a response to the severe economic crisis in 1996–1997, however, public authorities undertook a series of macroeconomic stabilization measures such as the introduction of a currency board, stricter fiscal discipline and structural reforms. Thus, active policies to boost labour market participation gained more importance (Tache and Neesham 2011).

Since the beginning of the 2000s, the relative share of social protection benefits as a percentage of Gross Domestic Product (GDP) gradually decreased to reach 12.9% in 2007, compared to 14.1% in 2000 (Mihaylova and Bratoeva-Manoleva 2016, p. 8). Despite the fact that this trend was reversed to some extent in the period 2009–2016, the percentage share of the overall social protection expenditure to GDP is still well below the European Union (EU) average (Eurostat, 2018a).

Bulgaria became an EU Member State in 2007, which required harmonization of the national legislation with the European social regulations. Nevertheless, more than ten years after Bulgaria's EU accession, its social protection system is facing some major challenges such as high levels of poverty and income inequality, limited adequacy and coverage of the minimum income schemes, difficulties in accessing healthcare and low public expenditure on health (European Commission, 2019).

The current Bulgarian social security system is based on the Bismark model (Sredkova 2016, p. 39). Social protection consists of social security based on insurance contributions, social security schemes and non-contributory social assistance, including the social service system funded by the state budget (EMN 2014, p. 18). The social security system based on contributions includes nine standard social risks (Table 4.1) and provides benefits in case of temporary incapacity/reduced capacity to work, maternity (pregnancy, childbirth, and child care), unemployment, invalidity, old age and death. The National Social Security Institute (NSSI) manages the state social security.

The healthcare system is based on two schemes: a compulsory social insurance scheme covering all residents and a state funded scheme covering individuals who do not contribute to the health insurance scheme (such as children and pensioners). Health care is provided by different institutions. The Ministry of Health is responsible for the provision of benefits financed from the state budget (medical aid in emergency cases, examinations of disability, etc.), whereas the National Health Insurance Fund is the competent institution for granting the benefits financed by health insurance contributions (urgent medical care, childbirth and maternity, vaccines, etc.). The Social Assistance Agency under the management of the Ministry of Labour and Social Policy and via the Social Assistance Directorates manages family benefits and social assistance policies. Other institutions responsible for social security in Bulgaria include the Employment Agency, the Agency for Persons with Disabilities, the National Revenue Agency, the Executive Agency “General Labour Inspectorate” and the Financial Supervision Commission (EMN 2014, p. 20).

**Table 4.1** Types of social security benefits in Bulgaria and their financing principles

Benefits	Financing principle
1. Sickness and maternity: Benefits in kind	Contributions (employer and insured person) and taxes.
2. Sickness and maternity: Cash benefits	Contributions (employer and insured person). State budget covers deficit.
3. Invalidity	Contributions (employer and insured person). State budget covers deficit.
4. Old-age	Contributions (employer and insured person). State budget covers deficit.
5. Survivors	Contributions (employer and insured person). State budget covers deficit.
6. Accidents at work and occupational diseases	Contributions (employer).
7. Unemployment	Contributions (employer and insured person). State budget covers deficit.
8. Family allowances	Taxes.
9. Healthcare	Contributions and taxes.

Source: Own elaboration based on MISSOC data, updated as of June 2018. <https://www.missoc.org/missoc-database/comparative-tables/results/>. Accessed 2 March 2019

#### **4.1.2 Migration History and Key Policy Developments**

Communist Bulgaria (1944–1989) was characterised by government regulated labour migration, asylum driven emigration (due to a ban on the free movement of Bulgarian citizens), and movements of the Bulgarian population of Turkish ethnic origin (Markova 2010). The fall of the communist regime in 1989 led to major emigration due to the lifting of the ban on free movement, Bulgaria's deteriorating economic conditions and rising unemployment, as well as its political instability. Currently, the number of Bulgarians residing outside the country is estimated to be close to 1.1 million, living mainly in Spain, Greece, Germany, Turkey and the USA (Angelov and Lessinki 2017, p. 9). At the same time, Bulgaria has also started to show characteristics of a transit country used by migrants as a channel to enter Western Europe and slowly started to shift to a migrant receiving state (Bobeva 1994; Markova and Vankova 2014).

After a long period of transition to democracy, the Bulgarian economy began to stabilise in the first years of the new millennium, thus showing signs of economic growth. This led to a workforce shortage in 2007 and 2008 for the first time in the history of democratic Bulgaria (Angelov and Vankova 2011, p. 47). The economic growth and the new status of Bulgaria as an EU Member State led to an increase in student immigration, attracted EU citizens (OECD 2010, p. 194) and marked a peak in labour immigration of third-country nationals (Angelov and Vankova 2011, p. 47). The onset of the global economic crisis, however, led to another decline in immigration (Markova and Vankova 2014, p. 40). Currently, some sectors of the recovering economy are experiencing workforce shortages. For instance, in 2016 the

majority of work permits were granted to highly qualified specialists in the IT and engineering sectors who could benefit from exemptions from a labour market test on the basis of the 2016 Law on Labour Migration and Labour Mobility (OECD 2018, p. 218).

Net migration still remains negative (OECD 2018, p. 218). According to the latest OECD data from 2016, the stock of foreign-born residents in Bulgaria is 147,000 or 2% of the total population (ibid). The main countries of origin of non-EU residents are Russia (18.7% of the total foreign-born population), Syria (8.4%), Turkey (6.9%) and Ukraine (6%) (OECD 2018, p. 218). Foreign-born residents originate also from EU countries such as the United Kingdom, Germany and Greece (ibid). EU citizens amount to one third of the total foreign-born population. According to Eurostat data on first residence permits, family-related migration (33%) prevails over employment-related immigration (16.6%) (Eurostat, 2018b). Nevertheless, the majority of permits in 2017 were issued on the basis of residence (e.g. for foreign retirees) and humanitarian reasons (38.8%). After several years of a steady increase in the number of asylum applications, 2017 marked a significant drop to 3700 applications (OECD 2018, p. 218). By contrast, international student enrolment increased to 5.4% of the total student population (ibid).

Before Bulgaria's EU accession process commenced, asylum and migration policies were largely neglected. By 2007, the country had fully harmonised its legislation on migration in line with the EU *acquis* (Nedeva 2007, p. 25) and had laid the foundations for the development of Bulgarian migration policy. A national public policy in the field of migration was established, however, only after the accession of Bulgaria to the EU (Krasteva et al. 2011, p. 11). It was developed on the basis of four national migration strategies (for more details, see Vankova 2018a, 387–390). Nevertheless, a comprehensive national migration policy, which goes beyond Bulgaria's long-term aims for accession to the Schengen Area and attracting foreigners of Bulgarian origin, is not a fact yet (Vankova 2018a, pp. 457–458). The country's need for labour migration has still not been officially articulated at either the political or policy level (ibid).

## 4.2 Migration and Social Protection in Bulgaria

The conditions for citizens and foreigners to access social security in Bulgaria vary depending on the type of benefits. In general, Bulgarian nationality and a period of prior residence are not eligibility requirements (with some exceptions) and the general procedures for accessing social security are the same for all individuals. In most cases, the right to social security is linked to individual's employment status. However, the rules on labour migration and employment of foreigners are covered by legislative acts falling out of the scope of the social security legislation, such as the Law on Labour Migration and Labour Mobility and the Law on Foreigners. Therefore, despite the fact that nationality and length of stay are not key factors determining the right to social security, its implementation in reality depends on

complex inter-institutional coordination mechanisms involving not only social security authorities, but also ministries and agencies governing labour market entry and residence permits. On the other hand, Bulgarian nationals residing abroad are entitled to claim benefits from Bulgaria only on the basis of concluded bilateral social security agreements with third countries or under the EU social security framework if they reside in an EU Member State.

The individual's employment status in gaining access to social security has been a decisive feature of the Bulgarian social protection system since the major reform that took place at the beginning of the 2000s. Public authorities have not publicly articulated any intentions to make a shift away from this approach yet. Furthermore, as recent social protection and migration policy developments show, no change in third-country nationals' social protection status has been envisaged as part of the political agenda of the current government.

A possible explanation for keeping the *status quo* is that the social protection system is considered to be already well adapted to the needs of these groups and policy-makers do not see a need for further reforms. For example, the National Strategy in the Field of Migration, Asylum and Integration states that "Republic of Bulgaria has contemporary, well developed and functioning equal opportunities, social inclusion and non-discrimination legislation, which is in full compliance with the European standards" (Council of Ministers, 2015, p. 28). Despite the fact that "ensuring social inclusion and integration of third-country nationals" is listed among the priorities of the Strategy (p. 40), there is no explicit reference to concrete initiatives to adapt current social protection instruments. This demonstrates that the integration of third-country nationals is not among the driving forces that have been shaping social protection policy agenda in Bulgaria.

Other possible explanations for the current social protection policy are that expanding its scope to non-employed third-country nationals is not in line with Bulgaria's migration policy and would not bring any political dividends. Since the need of labour migration is not a politically articulated priority yet, liberalising the social protection regime would run counter to the current migration policy of the country which is based on restrictive general entry conditions and keeping migrant workers in a temporary position (Vankova 2018a, p. 457).

Furthermore, the effectiveness of the national social protection system is still problematic, which has been stressed recently by the European Commission. It was pointed out that Bulgaria "has still one of the highest numbers of people living at risk of poverty or social exclusion as well as high levels of income inequality" and that "social transfers have a low impact on poverty reduction" (European Commission, 2019, p. 35). This concerns in-kind transfers and health benefits in particular. In a context where the level of social protection for the national population is relatively low, any efforts to promote better coverage and adequacy of social protection for foreign residents is not considered a successful political move despite the slowly growing number of third-country nationals residing in Bulgaria.

#### 4.2.1 *Unemployment*

Unemployment benefits are paid on the basis of a compulsory social insurance scheme financed by contributions covering only employees and providing earnings-related benefits. The scheme is financed by contributions from employers and employees. Bulgaria does not have any unemployment assistance scheme.

The unemployment benefits are granted by the NSSI and regulated via different legislative acts, including the Social Insurance Code,<sup>1</sup> the Labour Code,<sup>2</sup> and the Law on Employment Promotion.<sup>3</sup> Only resident nationals, EU citizens and long-term residents<sup>4</sup> who are employees in Bulgaria are eligible to claim unemployment benefits. Non-EU foreigners who do not hold the status of long-term residents are not considered as eligible claimants, with the exception of Blue Card holders under certain conditions. Unemployment benefits are granted to individuals who have paid social insurance contributions for at least 12 months in the previous 18 months before becoming unemployed. Prior residence in Bulgaria is not an eligibility requirement for nationals and EU citizens. Applicants, however, must be registered as unemployed at the Labour Bureau Directorates of the Employment Agency and they must regularly prove they are job searching. Their registration (and therefore the unemployment benefits) will be terminated if they refuse to accept an appropriate work offer and/or inclusion in programs and measures for employment and training.

The amount paid for unemployment benefits is dependent on previous earnings and duration of employment. These benefits are paid for maximum 52 weeks. Failing to cooperate with the employment services could lead to the temporary suspension of unemployment benefits (with the possibility of a subsequent registration six months after the termination of the previous registration). Although there is no formal requirement, if Bulgarian citizens, EU nationals or third-country nationals with long-term residence leave the country temporarily, they risk being deregistered from the Employment Agency and hence lose their benefits. Export of unemployment benefits is possible only on the basis of EU law and bilateral agreements on social security coordination. Among the main countries of origin for migrants in Bulgaria (Russia, Turkey and Ukraine) and destinations for Bulgarians (Turkey, USA and Canada), the agreement between Bulgaria and Ukraine is the only one which includes unemployment benefits in its material scope (Vankova 2018b).

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<sup>1</sup> *Кодекс за социално осигуряване*, Promulgated in State Gazette (SG) 110/17 December 1999, last amendment in SG 105/18 December 2018.

<sup>2</sup> *Кодекс на труда*, Promulgated in SG 26/ 1 April 1986, last amendment in SG 92/ 6 November 2018.

<sup>3</sup> *Закон за настърчаване на заетостта*, Promulgated in SG 112/ 29 December 2001, last amendment in SG 91/2 November 2018.

<sup>4</sup> Including permanent residents.

#### 4.2.2 *Health Care*

The Bulgarian healthcare system is financed through contributions and taxes. It is regulated by several acts including, among others, the Law on Health Insurance<sup>5</sup> and the Law on Health.<sup>6</sup>

All resident nationals, EU foreigners, and third-country nationals who hold the status of long-term residents<sup>7</sup> are covered by the healthcare system or social insurance for benefits in kind, independently of their employment status. Their participation in the health insurance system is mandatory. However, non-EU citizens with short-term and continuous (up to one year) residence permits must cover the costs of medical care at prices determined by the medical establishment. In principle, they are not required to pay health insurance contributions.<sup>8</sup> They are obliged to have a private health insurance or private insurance covering the costs of treatment/hospitalisation during their stay in Bulgaria, unless otherwise stipulated in international treaties. Nevertheless, all individuals have the right to emergency medical aid, including those with permission for short-term and continuous residence, irrespective of whether they are workers, self-employed, unemployed or family members (EMN 2014, p. 7). Dependent family members of an insured national do not automatically derive the right to be co-insured.

Since the Bulgarian health system is universal, there is no minimum period of insurance or residence required for resident citizens (except for citizens returning to Bulgaria after a long-term stay abroad – see details below) and EU nationals to become eligible to claim benefits in kind. Non-EU citizens need to wait at least five years before they can access long-term residence in order to be covered equally as nationals by the healthcare system. Nevertheless, a minimum period of insurance is required in two different cases for non-resident nationals. Firstly, when Bulgarian citizens reside abroad for less than 183 days a year or over 183 days a year and do not declare that they will be insured abroad. In general, Bulgarian citizens who intend to stay abroad for more than 183 days have to submit a declaration for leaving the country. On that basis, individuals are exempted from the obligation to pay health insurance contributions in Bulgaria (Article 40a of the Law on Health Insurance). If they fail to do so, they are treated as compulsory insured and can lose

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<sup>5</sup>Закон за здравното осигуряване, Promulgated in SG 70/19 June 1998, last amendment in SG 105/18 December 2018.

<sup>6</sup>Закон за здравето, Promulgated in SG 70/10 August 2004, last amendment in SG 102/ 11 December 2018.

<sup>7</sup>Including permanent residents.

<sup>8</sup>With exceptions for some groups (Article 24 (1) 5,7,8,9,10,13,14 and 16 of the Law on Foreigners in the Republic of Bulgaria) which could receive permission for continuous residence if they have visa for up to six months. If they are insured according to the Law on Health Insurance, their treatment shall be covered by the National Health Insurance Fund (Article 6, para 1 of the Ordinance No 2 of 2.07.2005). In some of these cases, they can be insured as employed/ self-employed persons, i.e. have a permission for continuous residence and meet the requirements of the Law on Labour Migration and Labour Mobility (see Article 8 (1) 2).

their health insurance right after not paying more than three monthly mandatory health insurance contributions within the last 36 months. The right can be restored with a one-off payment of all monthly contributions due for the last 60 months has to be made (Article 109 of the Law on Health Insurance).

The second case concerns Bulgarian citizens who live abroad for more than 183 days and declare that they are insured in the country of residence, i.e. have submitted a declaration before leaving the country. They can acquire health insurance rights in Bulgaria in two ways: after a minimum period of insurance of six months after returning to Bulgaria or if they pay a lump sum of 12 monthly health insurance contributions (Article 40a of the Law on Health Insurance). Moreover, they have to submit a declaration that they have returned to Bulgaria. Before they acquire health insurance rights, they are treated as non-EU citizens and need to pay for medical care. If non-resident nationals continue to pay the mandatory health insurance contributions, they do not lose their health insurance rights and can receive treatment from the home country. These requirements do not apply to citizens residing in an EU Member State although in this case, Bulgarian nationals must prove that the national legislation of the respective country was applied to them during their stay abroad. Otherwise, they are treated as individuals who have lost their insurance rights. In order to restore them, a one-off payment of all monthly contributions due for the last 60 months has to be made (Article 109 of the Law on Health Insurance).

The social security system covers partial costs and there is a co-payment from the patient. The social insurance covers the costs in the so-called “main package of healthcare activities” as provided by Ordinance No 3 of 20 March 2018 for determining the package of healthcare activities guaranteed by the National Health Insurance Fund budget. Healthcare costs incurred outside the scope of the main package are covered by patients. Resident nationals, EU citizens and long-term residents contribute towards the costs of their hospital treatment by covering the “hotel costs” and the treatment provided. The cost of pharmaceutical products is only partly covered by the health care scheme. Nationals residing in non-EU countries could receive health benefits in kind from Bulgaria only if there is a bilateral agreement with their host country that covers health care within its material scope.

Sickness cash benefits are available to resident nationals, EU nationals and non-EU foreign residents who are in employment and have a minimum period of insurance of six months (for people aged 18 or above). There is no qualifying period in case of cash benefits for temporary incapacity due to occupational disease or employment-related injury. Prior residence in Bulgaria is not an eligibility requirement, but those receiving sickness benefits cannot leave the country for a temporary stay abroad. The legal framework sets a maximum period for receiving this benefit of six months without an interruption, 12 months with an interruption over a period of three years, including the two years before the year of the sickness plus the year of the sickness. In exceptional cases, the period can be prolonged to a maximum of 18 months without interruption. Employers are obliged to continue paying the wages for employees who are on sickness leave for the first three days of the

incapacity. The agreements that Bulgaria concluded with Ukraine and Russia cover sickness cash benefits.

Resident citizens, EU nationals and non-EU foreigners are eligible for invalidity benefits in Bulgaria independently of their employment status. The analysed legislation defines “invalidity” as any loss or disruption in the anatomical structure, physiology or psyche of an individual. In general, social security benefits and allowances are provided to people with the so-called permanent disability, i.e. those who have permanently reduced opportunities to perform activities in a manner that is possible for a healthy person and for which the medical expertise has established a degree of reduced capacity or a type and degree of disability of at least 50%. The qualifying period varies depending on employment, age, conditions of insurance, etc. Residence is not an eligibility requirement. Nationals residing abroad are not entitled to claim invalidity benefits from Bulgaria unless they reside in a country that has concluded a bilateral agreement covering the export of invalidity benefits. Among the agreements analysed, only those concluded with Ukraine and Russia cover sickness cash benefits and invalidity pensions (Vankova 2018b).

#### **4.2.3 Pensions**

Public old-age pensions in Bulgaria include the contributory pension for insurance and old-age (*Пенсия за осигурителен стаж и възраст*) and the non-contributory social old-age pension (*Социална пенсия за старост*). The pension system has three pillars. The first one covers the mandatory public pension insurance and has universal coverage. The second pillar concerns the mandatory supplementary pension insurance. Contributions are accumulated in individual accounts. There are two types of funds: the Universal Pension Funds covering individuals born after 31 December 1959 and the Professional Pension Funds covering those working under severe and harmful conditions. The funding of the first pillar is characterized by standard pay-as-you-go defined benefit schemes financed through contributions from employers, employees and self-employed. The state covers the deficits. The second pillar is based on fully funded defined contribution schemes financed through contributions from employers, employees and self-employed (Universal Pension Funds) and employers (Professional Pension Funds). The third pillar is a voluntary supplementary pension insurance (privately managed, fully funded, defined contribution pension schemes). There are two types of funds: those for a voluntary supplementary pension insurance and those for a voluntary supplementary pension insurance under occupational pensionschemes.

EU and non-EU citizens, as well as nationals residing in Bulgaria and in other EU countries who are employees or self-employed are eligible for contributory pensions under the same eligibility conditions. There is no possibility to join the pension scheme on a voluntary basis. The minimum period of contribution required to become eligible to claim a contributory pension is 15 years, 12 of which shall be actual, i.e. the so-called “credited” insurance periods, for example maternity or

sickness leave, are excluded (Article 68 (3) of the Social Insurance Code). Insurance periods acquired abroad are taken into account only if there is an international (EU) agreement between Bulgaria and the countries where those periods have been accumulated. In 2018, such a pension can be granted only if the individual has reached 66 years and four months. Individuals receive a pension calculated on the basis of the actual number of contributory years, but not less than 15 years.

The retirement age for the standard public pension scheme is 61 years and four months for women, and 64 years and two months for men. The right to a pension occurs if the insured persons have at least 35 years and 8 months of insurance (women) and 38 years and 8 months (men), with some exceptions. The period of residence is not an eligibility condition for the contributory pension. Credited periods are also taken into account for entitlement to pensions and individuals can also pay contributions retrospectively in certain cases. As of 1 January 2019, only contributory income after 31 December 1999 is taken into account for determining the amount of pensions granted after 31 December 2018 (Article 70 (8) of the Social Insurance Code). However, concerning the pensions granted under a bilateral treaty or under European social security regulations, the reference income is the income acquired under the Bulgarian legislation.

Only those who do not qualify for a contributory pension based on their insurance record are eligible for a social pension. All applicants, including EU and non-EU nationals, who have their permanent address in Bulgaria become eligible for this flat-rate pension at the age of 70. The annual income of all family members is taken into account and it should not exceed the 12-fold amount of the guaranteed minimum income.

While export of contributory pensions to other EU Member States is possible, nationals residing in non-EU countries can access pensions from Bulgaria only if their respective countries of residence have concluded an agreement in this regard with Bulgaria. In some cases, non-contributory pensions fall into the material scope of the concluded bilateral agreements (for example with Russia and Montenegro), but it is explicitly stated that their export is not possible. Several bilateral agreements concluded by Bulgaria cover pensions. The agreements with Ukraine and Russia allow for the export of old-age, invalidity, and survivors pensions, as well as death grants (Vankova 2018b). The agreement with Turkey covers the export of all types of pensions of Bulgarian citizens who moved to Turkey after 1989 as provided by the back then Pensions Law (repealed in 1999). This agreement covers personal and survivors' pensions for "length of service, old age, disability and invalidity due to an accident at work or an occupational disease". The agreement with Canada also covers export of all pensions under the Bulgarian legislation.

#### 4.2.4 Family Benefits

Maternity and parental benefits in Bulgaria are granted on the basis of a social insurance contributory scheme in line with the Social Insurance Code and the Labour Code. It provides earnings-related (pregnancy and childbirth) and flat-rate (raising a child up to two years of age) benefits for economically active persons. Insurance is compulsory except for self-employed persons, who may join voluntarily. Family allowances are regulated mainly by the Law on Family Allowances<sup>9</sup> and are granted through a tax-financed scheme, access to which does not depend on the insurance or economic status of the person (with the exception of child-raising allowance up to one year for uninsured mothers).

Resident citizens, EU nationals and non-EU foreigners, as well as Bulgarians residing in other EU Member States who are employed (employees and self-employed) and have contributed for 12 months of insurance for this risk are eligible to claim maternity benefits. There are no specific requirements regarding prior residence in Bulgaria or the country of birth or residence of applicants' child. The maximum duration for the maternity leave and benefits is until the 410th day of the child's birth. Upon expiration of this leave, insured persons are entitled to a flat rate parental benefit for raising a child up to two years of age.

Maternity benefits are dependent on previous earnings. The daily cash compensation is set at 90% of the average daily insurable income for the period of 24 calendar months preceding the month of leave due to pregnancy and childbirth. Employers are not legally obliged to pay wages during the maternity leave. Bulgarian citizens and foreign residents who receive maternity benefits can leave the country temporarily (there are no conditions specified in the law). Export of this benefit is possible only if Bulgarian and EU citizens move to an EU Member State or to a country with which Bulgaria has signed a bilateral agreement which covers this risk. The latter is the only option for non-EU foreigners to export such benefit.

The above-mentioned eligibility rules also apply for paternity benefits. All residents (including foreigners) and Bulgarian citizens residing in other EU Member States who are employed can receive the paternity benefit and leave for 15 days.

Child benefits in Bulgaria<sup>10</sup> are conditioned to the residence and citizenship of the child. There is a residency requirement for children of Bulgarian citizens: Article 3 of the Law on Family Allowances requires both residence in Bulgaria and Bulgarian citizenship in case of families in which only one parent is a Bulgarian

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<sup>9</sup>Закон за семеените помоци за деца, Promulgated in SG 32/29 March 2002, last amendment in SG 105/ 18 December 2018.

<sup>10</sup>There are one-off and monthly allowances. One-off benefits can be granted for raising twins, for raising of a child by a mother (adoptive mother) who is a full-time university student, for pupils enrolled in first grade, for free railway and bus transport to mothers of multiple children, upon childbirth or adoption of a child. Monthly allowances can be granted for raising a child below the age of 20 until graduation from high school, for raising children under the age of one, for raising a child with a permanent disability, or for a child without a right to survivors pension from a disabled parent.

citizen. Third-country nationals are eligible to apply for such benefits only on the basis of bilateral agreements. For instance, the bilateral agreement with Russia covers maternity and family benefits.<sup>11</sup> The agreement with Ukraine covers maternity (in Bulgaria) and maternity and family allowances (in Ukraine).<sup>12</sup>

#### 4.2.5 *Guaranteed Minimum Resources*

Guaranteed minimum resource in Bulgaria is based on a general non-contributory minimum. Individuals who do not have the necessary means to meet their basic needs and require support for their reintegration in the labour market and society can receive monthly social assistance allowances (*Месечни социални помощи*) of a differential amount based on a discretionary entitlement. The allowances are means-tested and the provision is organised centrally. There is also a specific non-contributory minimum: the social old-age pension discussed above.

The Social Assistance Agency (*Агенция за социално подпомагане*) is responsible for granting social assistance allowances. The main provisions regulating these allowances are included in Law on Social Assistance.<sup>13</sup> Only resident nationals and EU citizens are eligible for social assistance as long as they have exhausted all possibilities for self-support. Non-EU foreigners without long-term or permanent residence cannot claim this benefit in Bulgaria.

The social assistance allowance is granted if the following criteria are met:

- the lodging where the claimant lives is composed of maximum one room for each person living in the household;
- the claimant does not possess immovable property that can be a source of income except for the assets serving the usual needs of the family (determined by a social worker);
- the claimant does not have contracts for the transfer of property in return for the obligation for support and care;
- the claimant has not purchased residential or summer-house property in the last five years;
- the claimant has not received transfers of residential or summer-house property through endowment in the last five years.

The period of prior residence is not an eligibility requirement, but the current address of national and EU citizens must be in Bulgaria. Claimants of working age must seek suitable work. Unemployed persons must have been registered in the Labour Bureau Directorates at least six months before submitting their application

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<sup>11</sup> See <http://www.nssi.bg/images/bg/regulations/icontrscts/Russia.pdf>

<sup>12</sup> See <http://www.nssi.bg/images/bg/regulations/icontrscts/Ukraina.pdf>

<sup>13</sup> *Закон за социално подпомагане*, Promulgated in SG 56/ 19 May 1998, last amendment in SG 105/18 December 2018.

for social assistance and must have not refused any offer of employment, inclusion in literacy, and/or vocational training. Unemployed persons of working age who receive social assistance without being included in employment programs (under Article 12b of the Law on Social Assistance) are obliged to provide community work through programs organized by municipal administrations. They are required to work for 14 days, four hours a day and failing to do so could lead to the temporary suspension of the benefit.

The minimum resource benefit is dependent on income, assets and family composition. It can be received as long as the relevant conditions are met, with a reassessment at relatively long intervals of time. Those receiving the benefit can temporarily leave the country if they have received permission from the Ministry of Health for treatment abroad. Apart from that, there are no special provisions on absence but in practice this will be difficult if they need to look for a job or do community work. Export of such benefit in principle is not possible, but this issue is not clearly regulated in existing legislation.

### 4.3 Conclusions

The findings of this chapter demonstrate that EU citizens and Bulgarians residing in the country or in other EU Member States have access to most social benefits granted in Bulgaria. Regarding third-country nationals, only long-term residents are covered for most benefits. Such social protection rights are also granted to beneficiaries of international protection, as well as special categories of migrants such as Blue Card holders on the basis of EU law.

In general, the Bulgarian social security law does not impose nationality requirements with the notable exception of the Law on Social Assistance which extends the rights under this act to several groups of non-EU citizens. Period of residence is not a formal requirement under Bulgarian social security law, but the current address must be in Bulgaria for most benefits. Despite the fact that eligibility differs for the various categories of benefits, the general procedures for national and foreign beneficiaries are the same. The legislative framework does not impose limits to temporarily absences either. However, there might be practical obstacles in some cases if persons leave Bulgaria temporarily. In case of permanent residence abroad (outside the EU), the export of benefits depends on bilateral agreements between Bulgaria and third countries.

There are several factors explaining Bulgaria's policy in this field. Firstly, the social protection expenditure as a percentage of GDP in the country is still below the level of other EU Member States, and the rates of poverty and social exclusion in Bulgaria are very high. In 2017, 39% of the total population lived at a risk of poverty or social exclusion (European Commission, 2019, p. 38). These facts suggest that social policy effectiveness in Bulgaria still comes short of ensuring that all resident nationals enjoy an adequate level of income protection. Therefore, the

current state of play of the national social protection system could be attributed to its overall design and political economy rather than to specific migration policy aims.

Another critical issue is the institutional coordination of the social protection and migration policies. As mentioned above, Bulgaria's social protection legislation generally does not impose limitations on access to cash or in-kind benefits depending on criteria such as nationality or length of stay in the country. Despite that, in some cases access to social benefits of third-country nationals can be hindered by policy designs and institutional arrangements outside the scope of the social protection system. For instance, employment status and history are the most important factors determining foreigners' access to contributory benefits. Notwithstanding that social security laws do not differentiate between beneficiaries of different nationality, in order to become entitled to social security benefits, foreigners have to accumulate necessary periods of contributions. Apart from cases where EU regulations and/or bilateral agreements are applicable, this requires a certain period of employment in Bulgaria and therefore depends on residence and work permits issued sufficiently long before the risk in question occurs. When it comes to social assistance, in order for non-EU citizens to be eligible for continuous residence, they need to have sufficient means of subsistence without recourse to the social assistance system in line with the requirements of Bulgarian migration law. The same is valid for accessing long-term residence status. This means that although the social security law does not limit the rights of non-EU citizens to such benefits, migration law poses restrictions in this regard.

To sum up, Bulgaria, which has a rather small share of foreign population and does not consider attracting immigration as a political priority, has put in place a rather restrictive labour migration policy that has an effect also on the number of foreigners who are eligible for social security benefits.

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# Chapter 5

## Migrants' Access to Social Protection in Croatia



Helga Špadina

### 5.1 Overview of the Welfare System and Main Migration Features in Croatia

The main objective of this chapter is to discuss the social protection system applicable to resident nationals, EU citizens and third country nationals residing in Croatia, as well as non-resident citizens. The chapter provides a comparative analysis of five different branches of social protection – unemployment, health care, guaranteed minimum resources, pensions, and family-related benefits – with a special focus on constraints linked to applicants' residence status or nationality towards their access to social benefits.

#### 5.1.1 *Main Characteristics of the National Social Security System*

Croatian social security policy started to evolve from late nineteenth century under the rule of the Austrian-Hungarian Empire with establishment of charities, followed by the adoption of the first social laws and regulations after World War I (Puljiz et al. 2008). After World War II, Croatia was a federal republic within the Socialist Federative Republic Yugoslavia, being thus marked by the socialist approach to social rights with universal coverage, the introduction of exclusive state competencies regarding social protection and extensive social legislation guaranteeing all social rights (Puljiz et al. 2008). After gaining independence in early 1990s, Croatia

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initially started to struggle with social policies aimed at minimizing the consequences of the war for independence. In this period, the main priorities were the social rights of displaced population and war veterans, the reparation of war damages and the economic crisis. Consequently, Croatia initiated a tripartite social dialogue and embarked on a reform of the health insurance system and the pension insurance system. During the period 2000–2007, the country adopted more comprehensive reforms and harmonized its social policies to the EU standards, in preparation for full European Union (EU) membership (Croatia became a candidate country in 2004 and a full EU Member State in 2013).

In the mainstream typologies of welfare regimes, Croatia could be classified as a southern welfare state as its cash benefits are highly fragmented and very dualistic, with a clear opposition between overprotected insiders (public employees, white-collar labour force, employees of state companies) and outsiders (migrants, women, irregular workers), substantive informal economy, and a strongly gendered labour market (Martin 2015). The current social protection system is mainly based on employment status and on family links between the social security holder and dependant family members. Most social rights are based on contributions and mainly financed from obligatory social contributions of workers. However, social welfare benefits and child allowance are needs-based and means-tested.

During the past years, there were two main changes in the Croatian social protection legislation. The first one was the introduction of the EU legislation on portability of social benefits (due to Croatia's accession to the EU) and the inclusion of EU nationals in the social security legislation, on equal footing as nationals. However, after 7 years of EU membership, national laws have not fully been aligned to the EU *acquis communautaire*, such as the case of the Social Welfare Act explained below. The second change refers to the expansion of the entitlement to certain social benefits beyond traditional concepts of family members to include same-sex partners (in accordance with the new Law on Life Partnership of Persons of the Same Gender<sup>1</sup>). However, the extension of the scope of social rights to third country nationals has not been discussed so far in the context of the reform of the Croatian social security legislation.

### **5.1.2 Migration History and Key Policy Developments**

The history of migration in Croatia can be divided into four phases: (a) emigration for work and to escape conflict (from the fifteenth century until 1990); (b) involuntary migration to and from Croatia (1991–1995); (c) increase in legal and irregular immigration to Croatia (1995–2012); and (d) the development of migration policies aligned with the EU *acquis*.

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<sup>1</sup> *Zakon o životnom partnerstvu osoba istog spola*. Official Gazette 92/14. <https://www.zakon.hr/z/732/Zakon-o-%C5%BEivotnom-partnerstvu-osoba-istog-spola> Accessed 15 November 2018.

During the first period, Croatia experienced various migration patterns resulting from the country's dynamic political history and its strategic position. It is estimated that over 200,000 people left the region as a result of the Ottoman conquest and frequent wars between the Ottomans and the Habsburgs from the fifteenth to the eighteenth century (Mlinaric 2009). Between 1890 and 1939, there was massive overseas labour migration from Croatia to the Americas and Australia, with an estimated number of 550,000–650,000 emigrants causing serious depopulation of certain parts of the country, particularly the islands (Mlinaric 2009). Emigration further increased after World War II, although it was not voluntary. According to the estimations, approximately 250,000 individuals involuntarily emigrated from Croatia (Nejašmić 1991). In the post-war phase, the Yugoslav government concluded bilateral recruitment agreements which facilitated the labour emigration to European countries. In 1971, 671,908 Yugoslav citizens were working abroad, and Croatia had the highest emigration rate of all Yugoslav republics (Mlinaric 2009).

The domestic war in 1991–1995 caused another wave of mass, involuntary migration, coupled with labour migration. Around 450,000 persons emigrated from Croatia during those years (Mlinaric 2009). In that period, Croatia developed legal instruments for humanitarian protection of refugees and internally displaced persons, and the overarching needs of forced migrants dominated all migration policy approaches. At the same time, strategies for encouraging the Croatian diaspora to return were at the centre of all migration discussions (Gregurović and Mlinaric 2011).

From 2000 to 2009, Croatia experienced positive net migration, although this pattern changed after 2009 when the country started to witness negative net migration. Since the EU membership, an estimated number of 200,000 Croatians have migrated to other EU Member States. Between 2015 and 2017, approximately 138,000 Croatians have moved out of Croatia according to OECD data. Ireland hits the record of an increase of 431% immigration rate of Croatians, with the majority of migrants being in the working age 25–50, and one third being highly educated.<sup>2</sup>

In 2017, the government approved the issuance of 5211 work permits for the employment of migrant workers within the quotas, while 5960 work permits were issued during the same year.<sup>3</sup> In 2018, the Decision on work quotas was changed and the Government approved the issuance of 31,000 work permits. In 2019, a record number of 65,100 work permits were approved, out of which 15,000 existing permits can be extended and 41,810 new permits can be issued for the employment of migrant workers.

At the end of December 2017, 2645 EU nationals had their temporary residence in Croatia approved, while 7882 third country nationals were residing in Croatia. The main non-EU nationalities are from the neighbouring countries – Bosnia and Herzegovina and Serbia, along with Kosovo.<sup>4</sup>

<sup>2</sup> According to data cited in: <http://www.novilist.hr/Vijesti/Hrvatska/UBRZAVA-SE-ISELJAVANJE-IZ-LIJEPE-NASE-U-dvije-godine-iz-Hrvatske-odselilo-138-tisuca-ljudi>

<sup>3</sup> Decision on Determination of Labour Migration Quotas for Employment of Foreigners (2018). Ministry of Interior (2018).

<sup>4</sup> Official statistics of the Ministry of Interior, [www.mup.hr](http://www.mup.hr) Accessed 1 May 2019.

The history of emigration from Croatia has had a significant impact on current migration policies. The system of labour quotas for migrants is still in place despite its deficiencies and inefficacy. The last Migration Policy (valid between 2013 and 2015) and the current Foreigners Act deal in large part with combating irregular migration, and there are very few concrete measures aimed at attracting and facilitating migration of highly skilled foreigners other than EU nationals. The country's emigration history is clearly linked to the problem of restricted access to a number of social rights, which has resulted in ad hoc measures dealing with a small number of immigrants. However, due to changes in migration patterns, the accession to the EU – one of the external borders of which is in Croatia – and the need for a skilled labour force, the national migration policy will have to be adjusted to reflect new realities.

## 5.2 Migration and Social Protection in Croatia

This section closely examines the eligibility conditions for accessing social benefits across five core policy areas. In Croatia, unemployment insurance benefits are available for all employed and self-employed persons with a qualifying period of insurance of at least 9 months. Health care coverage is universal and the public health care system includes cash sickness benefits, but also maternity, paternity and parental benefits. The qualifying period for maternity leave is 12 months of consecutive insurance (or 18 months with interruptions during the last 2 years). The eligibility criteria for maternity exemption from work is the prior permanent residence of at least 3 years, compulsory Croatian health insurance and/or registration as unemployed for at least nine uninterrupted months or 12 months with interruptions in the last 2 years prior to the child birth. The eligibility criteria for maternity benefits is the permanent residence for at least 5 years.

Regarding pension benefits, Croatia has a mix of a contributory universal insurance scheme and a tax-financed universal scheme. Foreigners are obliged to contribute to the state funded and managed pension insurance scheme if they are legally employed in Croatia, although in absence of a bilateral social security agreement, pension contributions cannot be aggregated for foreigners. EU nationals enjoy exportability of pension contributions. Finally, the Law on Social Welfare has not still been harmonized with the EU legislation and currently it still stipulates only two categories of beneficiaries – nationals and foreigners, thus including EU nationals in the general category of foreigners. The conditions of access to social welfare are the same for all categories and they are needs-based with a means-test which has to prove whether requirements for social welfare are fulfilled.

The legal provisions stipulating the conditions for granting permanent residence in Croatia include an approved temporary residence permit for an uninterrupted period of 5 years prior to the submission of the application, including foreigners who were absent from Croatia on multiple occasions of up to 10 months in total within a 5-year period, or up to 6 months in the case of a one-time absence,

excluding any period of stay based on a work permit issued to seasonal workers, daily migrant workers and service providers on behalf of a foreign employer, and the time spent serving a prison sentence (Articles 92 and 93 of Foreigners Act). Three categories of foreigners can also apply for permanent residence under special circumstances. These include persons who, at the time of the application, had at least 3 years of uninterrupted temporary stay, and at least 10 years under refugee status, as demonstrated by a certificate of the competent state body for refugees. On the one hand, the beneficiaries of the programme of return, reconstruction or housing care include foreigners who are residents of Croatia since 8 October 1991, as demonstrated by a certificate of the competent state body for refugees, and those who can establish that they returned to Croatia with the intention to live there permanently by that date. Beneficiaries also include children whose two parents held permanent residence at the time of their birth or children of a single parent with a permanent stay (as specified in Article 94 of Foreigners Act). In addition to those requirements, foreigners wishing to establish permanent residence in Croatia must have valid travel documents, means of support, health insurance, sufficient command of the Croatian language and the Latin script, familiarity with the Croatian culture and social system (which is separately tested), and must not pose a threat to public policy, public health or national security.

The Foreigners Act lays down the rights of foreigners with permanent residence, which include the right to work and self-employment, vocational training, education and scholarships, social welfare, the rights to pension, health insurance, child benefits, maternity and parental support, tax benefits, freedom of association and connection and membership in organisations that represent workers or employers, or in professional associations.

### **5.2.1 *Unemployment***

Unemployment rights are regulated by the Labour Market Law.<sup>5</sup> The institution responsible for the implementation of unemployment benefits in Croatia is the Croatian Employment Office, which has competencies over labour market regulations, while also implementing the bilateral agreements on social security that contain clauses on the aggregation of employment insurance specifying entitlement to unemployment benefits. The Office also provides advisory support to the Government in the area of labour mobility of migrants- for instance, for setting annual labour quotas- and job search counselling service for the general population (including migrants who qualify for such services).

The organization of the unemployment benefits system in Croatia is based on social insurance of employed workers and the contribution that all employees pay from their monthly salaries. The unemployment scheme is financed primarily by

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<sup>5</sup>Official Gazette Number 118/18.

social insurance of employed and self-employed persons.<sup>6</sup> There is no special scheme of unemployment assistance in the country. Resident nationals and non-national EU citizens can access unemployment benefits under the same eligibility conditions. Third country nationals are generally excluded from accessing this benefit in Croatia, except for those originating from countries that have signed a bilateral social security agreement with Croatia covering unemployment benefits.

Claimants must comply with a qualifying period of insurance of at least 9 months. Prior residence in the country is not a requirement for accessing unemployment benefits, but rather periods of mandatory pension insurance linked to either work or one of the specially regulated situations that are equal as periods of employment. Registration with the national Employment Office, active job search and availability for work are legal requirements for receipt of unemployment benefits. The amount of unemployment benefits is linked to previous earnings in a way that it equals the average of 3 months gross salary prior to the submission of the claim. The total duration of the benefit is proportional to the previously completed employment period, up to a maximum of 450 days.

Export of unemployment benefits by national citizens is possible only within the European Union, if they register with the Croatian Employment Office at least 4 weeks prior to departure from Croatia, register with the national employment service in the other Member State within 7 days of arrival, and regularly participate in activities of the employment office in the destination country. Croatia has also signed international social insurance agreements that include unemployment insurance with Bosnia and Herzegovina, the Republic of North Macedonia, Serbia and Montenegro which are the main countries of origin of foreigners residing in Croatia, as well as important destination countries for Croatians residing abroad. Subsequently, nationals residing in those four countries have access to unemployment entitlements in Croatia on the basis of the reciprocity principle.

### **5.2.2 *Health Care***

The Croatian health care system is regulated by an extensive body of legislation, including the Compulsory Health Care Insurance Act,<sup>7</sup> the Health Care Act,<sup>8</sup> the Voluntary Health Insurance Act<sup>9</sup> and the Compulsory Health Insurance and Health Care of Foreigners in the Republic of Croatia Act.<sup>10</sup> Croatia has a compulsory social insurance scheme with universal health care coverage (95% of citizens are covered

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<sup>6</sup>While other sources of financing include assistance of international bodies and EU, income of the Employment Office according to special regulations, donations and own income of Employment Office.

<sup>7</sup>Official Gazette Number 80/13,137/13.

<sup>8</sup>Official Gazette Number 154/14, 70/16, 131/17.

<sup>9</sup>Official Gazette Number 85/06, 150/08, 71/10.

<sup>10</sup>Official Gazette Number 80/13.

by national, public health care). In general, the public health care scheme is mainly financed by contributions, but one part of the public health care is financed by the state budget (combined system of Bismarck and Beveridge models of health care financing). The health care system covers 80% of the health care costs, while beneficiaries cover the remaining 20%.

Beneficiaries of health care system are all employed and self-employed persons and dependent family members, as well as several categories of unemployed persons who have obligatory health insurance according to the Compulsory Health Care Insurance Act. The periods of insurance and residence are not preconditions for accessing benefits in kind after the payment of the first health insurance contribution. All the costs of health care services are directly paid by the social security, except a small portion paid by the beneficiary. If nationals have a full health care coverage,<sup>11</sup> all costs are fully covered by the social security system.

As the main condition for accessing health benefits in kind is either employment or permanent residence status, all EU and non-EU nationals have access to these benefits if they fulfil one of the qualifying conditions. Croatian nationals residing abroad have access only to cross-border health care services in other EU Member States if they fulfil the conditions stipulated in Articles 26–32 of the Law on Compulsory Health Insurance.

Regarding cash sickness benefits, they are paid instead of salary, but they are aligned with the salary amount. This is applicable to Croatian nationals, EU nationals and non-EU nationals under the compulsory health insurance scheme. General practitioner doctors need to issue an incapacity for work certificate in order for the patient to become eligible to claim sickness benefits. There are no specific conditions of prior contribution or residence for accessing sickness benefits in Croatia. Furthermore, these benefits can be granted for an unlimited duration. The employer covers the first 42 days of sickness, and the Croatian Health Insurance Fund covers the rest. While receiving sickness benefits, individuals cannot leave the country as the Croatian Health Fund can conduct inspections to check their health condition. Foreigners have access to these benefits under the same conditions as resident nationals if they are compulsory insured.

The right to cash benefits based on invalidity is regulated by the Pension Insurance Act as any loss, damage or incapacity of certain organ or body part more than 30%, which resulted from professional illness or injury at work. All employed and self-employed residents who are paying social security contributions regardless of their nationality and independently of the period of contribution are eligible to claim invalidity benefits. Re-examination is possible at any given moment within the period of 3 years following decision on the status by the specialised medical board. National citizens residing abroad can access invalidity benefits from Croatia in accordance with the European social coordination rules.

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<sup>11</sup> Consisting of obligatory health care coverage for basic services and additional health care coverage for full health care costs, including hospitalisation costs, complex medical treatment, specialist tertiary care costs, costs of all basic medications, etc.

All EU and non-EU citizens foreigners who are permanent residents legally employed in Croatia have compulsory health insurance in the same way as Croatian citizens. All beneficiaries have the option of paying additional health insurance, which then covers all costs 100% (this applies for nationals and non-nationals alike). The situation is different for third country nationals. The scope of the social rights of migrants in Croatia depends on their residence status and employment. European Economic Area (EEA) nationals and permanent residents enjoy certain social rights comparable to Croatian nationals, while other categories of migrant workers enjoy the right to compulsory health and pension insurance applicable to all categories of legally employed migrant workers, regardless of their nationality. For the past several years, the Council of Europe's European Committee on Social Rights has been warning Croatia that the situation regarding the access to health care for migrants is not in line with Article 13§4 of the European Social Charter. The Committee has noted that it has not been established that all legally and unlawfully foreign residents in need are entitled to emergency medical and social assistance.<sup>12</sup>

In general, all compulsorily insured migrant workers have access to health care, except temporary residents (those residing less than 5 years) whose health insurance contributions have not been paid for 30 days or longer. In that case, they are eligible to use only emergency healthcare (Article 8. paras. 1 and 2 of the Compulsory Health Insurance Act). In 1998, the Constitutional Court decided that limitations to emergency health care for insured nationals who have not paid health care contributions are unconstitutional and in violation of fundamental rights.<sup>13</sup> This decision is in line with international human rights standards and should be equally applicable to all categories of insured persons, regardless of nationality.

The Compulsory Health Insurance Act and the Act on the Health Protection of Foreigners in the Republic of Croatia stipulate that all migrants on short and temporary stay, as well as undocumented migrants who are not accommodated in a pre-deportation centre, should cover all health care costs, including emergency health care services. The European Committee of Social Rights has emphasised that all categories of foreigners in Croatia should be entitled to emergency health care and that this should not be linked to their pre-deportation or residence status.<sup>14</sup>

Furthermore, pregnant migrant women cannot derive their health care rights from any applicable laws, unless they are obligatorily insured in Croatia. The Act on Compulsory Health Care Insurance does not regulate the health care of female migrants, including ante- and postnatal care, nor does it regulate health care rights of new-born migrant children. Ante- and postnatal care is not clearly classified, so it

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<sup>12</sup> European Committee of Social Rights, Conclusions XIX-2 (2009), (CROATIA), January 2010, Articles 11, 13 and 14 of the Charter. European Committee of Social Rights, Conclusions XX-2 (2013), (CROATIA), Articles 11, 13 and 14 of the 1961 Charter.

<sup>13</sup> Constitutional Court of Republic of Croatia, U-I-222/1995, O.G. 150/98.

<sup>14</sup> European Committee of Social Rights, Conclusions XIX-2 (2009), (CROATIA), January 2010, Articles 11, 13 and 14 of the Charter. European Committee of Social Rights, Conclusions XX-2 (2013), (CROATIA), Articles 11, 13 and 14 of the 1961 Charter.

is difficult to assess whether delivery would be considered an emergency health service and whether it should be paid for. According to the Regulation on the conditions, organisation and working arrangements of out-of-hospital emergency health care, emergency delivery outside the hospital conducted by the competent emergency staff is considered an emergency health service. Another issue is that the scope of health care rights for migrant children is not specifically regulated, so it is unclear whether they enjoy the same scope of health protection as Croatian nationals. Without proper legislation, it is difficult to assess whether access to health services for migrant children is in accordance with international human rights instruments. Thus, children of undocumented migrants outside a pre-deportation centre might be denied access to health care (Spadina 2015).

The bilateral social security agreements that Croatia has concluded with Bosnia and Herzegovina and Serbia regulate the same scope of health care rights for nationals of these countries, including cash benefits for sickness and invalidity due to professional sickness or injury at work. The agreement concluded with the Republic of North Macedonia stipulates the same scope of health care rights as the agreement with Bosnia and Herzegovina, with a small difference that this agreement specifically includes invalidity cash benefits.

### **5.2.3 *Pensions***

Pension rights in Croatia are regulated by the Pension Insurance Act.<sup>15</sup> Croatia has a mix of a contributory universal insurance scheme and a tax-financed universal scheme.<sup>16</sup> The finance scheme of the pension fund is based on contributions from beneficiaries, capitalized contributions, state budget, own income of the Pension Fund, and other income. The pension insurance is obligatory for all employed and self-employed persons, regardless of their nationality. To access an old-age contributory pension, applicants must prove a minimum period of contributions of 15 years and a qualifying minimum age of 65 years (with on-going extension up to the age of 67 from 2038). There are several categories of persons who are insured within the pension insurance system even if they are out of the labour market. This includes young persons during internships and on-job trainings, parents during the first year of the child, the caretakers of war veterans, unemployed individuals and high-achieving athletes. The amount of the pension is based on earnings over the whole career.

Non-national EU citizens and non-resident nationals can access contributory pensions from Croatia under the same conditions as national residents. However, non-EU foreigners are not entitled to claim contributory pensions in Croatia, except

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<sup>15</sup> Official Gazette Number 157/13, 151/14, 33/15, 93/15, 120/16.

<sup>16</sup> Non-contributory pensions do not exist in Croatia, but certain categories of persons have beneficial access to pension rights (war veterans, members of the Parliament, and similar categories).

for those originating from countries that have signed bilateral social security agreements with Croatia covering entitlement to the pension scheme. Some bilateral agreements signed by Croatia (such as the ones with the Republic of North Macedonia and Australia) do offer a facilitated access to public contributory pensions. If a national citizen was employed in one of the seven non-EU countries with which Croatia has concluded bilateral social agreements, aggregation would take place and periods of insurance would be recognized according to the provisions of those agreements.

#### **5.2.4 Family Benefits**

Family benefits in Croatia are regulated by the Maternity and Parental Entitlements Act<sup>17</sup> and the Child Allowance Act.<sup>18</sup> The whole area of family benefits is a non-contributory, tax-financed scheme. The institutions responsible for the management of family-related benefits are the Croatian National Health Insurance Authority (for maternity and paternity benefits) and the Croatian National Pension Fund (for child benefits).

Maternity and paternity benefits are available to employed and self-employed persons, regardless of their nationality. It is possible to voluntarily join the national health insurance which then gives the right to access maternity and paternity benefits, but it is not possible to voluntarily join the maternity and paternity benefits scheme only. The Law also includes several categories of unemployed persons who are obligatory health insured into the maternity benefits scheme. The only difference between employed and non-employed persons is the requirement for uninterrupted residence of at least 3 years for non-employed persons. EU and non-EU foreign residents can access these benefits under exactly the same conditions as resident nationals.

Maternity benefits are dependent on previous earnings and can be paid for a maximum of 28 weeks. After this period, they can be replaced by parental benefits paid for up to 32 weeks. Each parent is entitled to use 16 weeks of paid parental leave if they share the parental leave entitlement, or 32 weeks of parental leave if only one parent uses it. If a parent has less than 12 uninterrupted months of employment prior to the activation of cash benefits, she/he receives 70% of the statutory amount of parental benefit, whereas for the rest, the benefit is paid 100%. The Law does not regulate the matter of where the child is born or resides; nor does it regulate the exportability of parental rights or the possibility that the parents move abroad while receiving the benefits.

Child benefits are available to a parent of a child who has uninterrupted residence in Croatia of at least 3 years prior to the application for the child allowance (this

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<sup>17</sup> Official Gazette Numbers: 85/08, 110/08, 34/11, 54/13, 152/14, 59/17.

<sup>18</sup> Official Gazette Numbers: 94/01, 138/06, 107/07, 37/08, 61/11, 112/12, 82/15.

applies independently if the beneficiary- i.e. the parent- is a Croatian national or a foreign resident). The child who is abroad for more than 3 months loses the right to child allowance, except if the beneficiary is an EU national (in this case, the rule does not apply due to the EU social security coordination) or if bilateral agreements with non-EU countries regulate differently. Beneficiaries can be non-EU citizens who have permanent residence in Croatia of at least 3 years, recognized refugees and persons under subsidiary protection. The benefit can be received until the child reaches the age of 15 years old, extended for those who continue a formal education. Child benefits are limited only to those parents whose income is below a certain income threshold. Child allowance is exportable only to other EU Member States. Out of all seven social security bilateral agreements signed by Croatia, only the agreement with the Republic of North Macedonia offers facilitated access to the child allowance scheme.

### **5.2.5 *Guaranteed Minimum Resources***

The Social Welfare Act<sup>19</sup> regulates social welfare. The institution responsible for this area is the Ministry of Demography, Family, Youth and Social Policy. Social assistance is a non-contributory benefit, organized centrally and available to all resident nationals and certain categories of foreigners who are in need. The eligibility criteria include income/means-test and ownership of property test for all applicants. Length of residence is not a precondition for national residents. The situation is different for foreigners as, in order to access this benefit, they should either have permanent residence in Croatia (the permanent residence is granted after 5 years, which has been criticised as an excessive residence length<sup>20</sup>) or belong to particularly vulnerable groups like asylum seekers, refugees, persons under subsidiary or temporary protection (or members of their families), unaccompanied minors or victims of human trafficking. For all those particularly vulnerable categories, the length of residence is not a precondition for claiming social welfare assistance. National citizens residing abroad are not eligible to claim these benefits from Croatia.

Claimants of social assistance must have exhausted all legal duty of maintenance that is regulated by the Family Act (which regulates not only duty of parents to support minor children, but also a legal duty of adults to support aging parents). Beneficiaries of the social welfare assistance are obliged to actively seek employment if they are able to work. They are also obliged to participate in community work of minimum 30 h and maximum 90 h per month. If the beneficiary does not

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<sup>19</sup> Official Gazette Number 157/13.

<sup>20</sup> Human Rights Council, Working Group on the Universal Periodic Review. Geneva, 1–12 November 2010, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1, Summary of 11 stakeholders' submissions<sup>1</sup> to the Universal Periodic Review. A/HRC/WG.6/9/HRV/3, page 8, point 52.

actively seek work, his/her right to social welfare can be revoked. The same applies if the beneficiary leaves Croatia for more than 15 days.

Welfare allowance in Croatia is a flat-rate benefit per household member if all of them qualify for social assistance. The benefit can be received for an unlimited duration (i.e. until the end of a need). However, the amount of this welfare allowance per person is insufficient to allow for a dignified living (the average amount is only 105.00 EUR per month). Another significant obstacle for accessing the benefit is related to the complex requirement for submitting at some instances as many as 23 supporting documents,<sup>21</sup> plus three statements of the claimant (related to the right of the Centre for Social Welfare to make remarks in the property records, to check all bank accounts of the claimant, and to use and check the information acquired in procedure). Moreover, none of the seven bilateral social security agreements that Croatia has signed with the main non-EU countries of destination for Croatian nationals and with the main countries of origin of non-EU foreigners residing in Croatia cover the area of social assistance.

### 5.3 Conclusions

When we analyse the scope of social rights applicable to Croatian nationals as compared to EU nationals and third country nationals in Croatia, it is important to highlight that access to social rights is often very difficult to nationals due to overly complicated statutory provisions and excessive requirements for supporting documents. Looking into the scope of social rights of EU nationals, unfortunately, even several years after Croatia's accession to the EU, social legislation has not been fully harmonized to allow the unrestricted access to all social rights as compared to Croatian nationals. Example for this is Law on Social Welfare stipulating the right to social welfare for the general category of "foreigners" without specifically distinguishing EU nationals as a category *per se*, *even after the latest amendment of the Law in 2020*. Thus, we cannot speak about full equality in access to social rights.

Non-EU nationals, on the other hand, have limited access to social rights, linked to the employment or permanent residence status. They do not enjoy the full scope of family benefits, the right to social housing or other specific social rights, including unemployment benefits and contributory pensions. The social security legislation has not recently expanded the scope of social rights of third country nationals. In addition, exportability of their social rights depends only upon the existence of bilateral social security agreements. According to Article 68 of new Law on Labour Market, a Croatian national who was employed abroad has access to unemployment rights in accordance with bilateral social security agreements. In the absence of such agreements, nationals have the right to unemployment benefits from Croatia if

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<sup>21</sup> See the list of documents here: <http://czss-osijek.hr/zahtjev-zmn/>. Accessed 01 Sep 2018.

they contributed to the Croatian Employment Fund for 9 months during the last 24 months since their employment abroad was terminated.

Two main changes marked the development of the Croatian social legislation in recent years. The first one was the introduction of portability of social benefits to the EU (due to the accession of Croatia to the EU). Another significant change is the expansion of entitlements of certain social benefits beyond traditional concepts of family members to include same-sex partners (in accordance with the new Law on Life Partnership). There are no significant attempts to modernize this currently outdated system of social protection. Procedures to apply for social benefits are overly complicated and unnecessarily burdened by high number of supporting documents. This is often impossible to navigate even for nationals, and particularly so for foreigners. In fact, there is no social benefit for which the application can be submitted online.

There is an ongoing discussion about the reform of the Croatian social welfare system, potential changes of the entitlement to the national pension for those who do not have 15 years of pension contributions and reform of family benefits to include higher number of children entitled to receive child allowance and raise of the maternity cash benefits. However, there are no discussions on the possibility to extend the access of foreigners or nationals residing abroad to social benefits.

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# Chapter 6

## Migrants' Access to Social Protection in Cyprus



Christos Koutsampelas

### 6.1 Overview of the Welfare System and Main Migration Features in Cyprus

Cyprus is a small island country located in the eastern Mediterranean. The country gained its independence in 1960. In 1974, a failed coup d'état triggered the invasion of the Turkish army which occupied the northern part of the island. The invasion caused economic devastation and forced many Cypriots to flee to Greece, the UK, Canada and Australia (Konstantinidou [this volume](#)). The ensuing humanitarian crisis strengthened social solidarity fostering political consensus for building a more comprehensive welfare state (Neocleous [2014](#)). During the 1980s and the 1990s, the Cypriot economy underwent rigorous transformations leading to an impressive economic growth that has turned Cyprus into an attractive destination for immigrants. The large inflows of migrants brought about challenges in terms of integrating them in the local society, as well as adapting social policies to address their diverse needs.

#### 6.1.1 Main Characteristics of the National Social Security System

The social protection system of Cyprus consists of a comprehensive array of contributory and non-contributory benefits. The architecture of the system combines elements from a variety of welfare models. It has some Beveridge type features inherited from the British colonial era (Shekeris et al. [2009](#)), while also sharing

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commonalities with the typical Mediterranean welfare regime, such as the active role of family in complementing insufficient statutory provisions (Gal 2010; Koutsampelas and Pashardes 2017). Meanwhile, the regulatory framework is in a process of constant ‘fine-tuning’ in an attempt to move closer to European standards and to conform to European Union (EU) regulations (Ioannou 2008; Koutsampelas and Pashardes 2017).

According to the ESSPROS database, the share of GDP devoted in social protection reached 19.1% in 2016, well below the EU-28 average (28.2%). Close to 70% of these resources are directed to pensions and healthcare. The share of pensions in total expenditures has been constantly increasing during the last decades (reaching 48.7% in 2016) due to population ageing and other institutional factors (Koutsampelas 2012). On the contrary, the share of healthcare in total expenditure has declined during the last years. At 18.5% in 2016, it is one of the lowest in Europe (Theodorou et al. 2018). The system is financed by social contributions (45.3% of total financing), general government contributions (49.8%) and other sources (5%), with the share of social contributions steadily increasing during the last decade.

The backbone of the social protection system is the Social Insurance Scheme (SIS)<sup>1</sup> administered by the Ministry of Labour, Welfare and Social Insurance (MLWSI). The SIS is financed by compulsory social insurance contributions paid by employees, self-employed, voluntarily insured persons, employers and the state. Apart of old age benefits, the scheme offers access to several short-term benefits providing income support to a variety of contingencies (unemployment, sickness, etc.).

There is also a number of non-contributory cash benefits covering several types of contingencies. The most important one is the Guaranteed Minimum Income (GMI), a top-up benefit ensuring that every legal resident enjoys a minimum acceptable standard of living. The level of GMI depends on family size and beneficiary’s specific needs. Other non-contributory cash benefits include the child benefit, the single parent benefit, the student grant and various disability benefits. Non-contributory benefits are typically means-tested (except for disability benefits) and financed by general taxation.

Beneficiaries of in kind healthcare provision are entitled to a medical card which provides access to free of charge healthcare services in public hospitals financed by general taxation. Medical card holders should be Cypriots or EU citizens permanently residing in Cyprus who fulfil additional requirements (i.e. means-testing). Registration in the scheme is voluntary with the exception of civil servants who have to pay a compulsory contribution calculated on their emoluments.

During the last years, the social protection system has undergone significant reforms driven by economic, demographic and institutional factors (Ioannou 2008; Simone 2011; Christou et al. 2016). The bulk of the reform efforts were concentrated on pensions and minimum income. The pension system was extensively reformed in 2010–2013 aiming at ensuring its fiscal sustainability. During the same

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<sup>1</sup>The scheme is regulated by the Social Insurance Law of 2010 and Regulations Issued Thereby.

period, non-contributory benefits were also reformed by tightening eligibility criteria, introducing stricter income-testing and reducing benefit rates (Christou et al. 2016). Not all reforms were motivated by an economic rationale. In 2014, the old minimum income scheme was fundamentally reformed by substituting the old regime of public assistance with a modern, better functioning, GMI scheme (Koutsampelas 2016), while a new universal healthcare system is expected to be in full operation in 2020.

### ***6.1.2 Migration History and Key Policy Developments***

During the last two decades, Cyprus has been an attractive destination for labour migration due to labour shortages in many sectors of the economy (Trimikliniotis and Demetriou 2011). The successful accession to the EU in 2004 also played a role as it led to further opening the labour market due to the harmonisation of the legal framework with the EU Directives and the abolishment of several restrictions to immigration. Meanwhile, a large number of working permits to third-country nationals were issued to cover shortages in the low-skilled sectors of the economy (Eliofotou 2008; Christofides et al. 2007). Immigration contributed to the very good performance by means of wage moderation (Christofides et al. 2007).

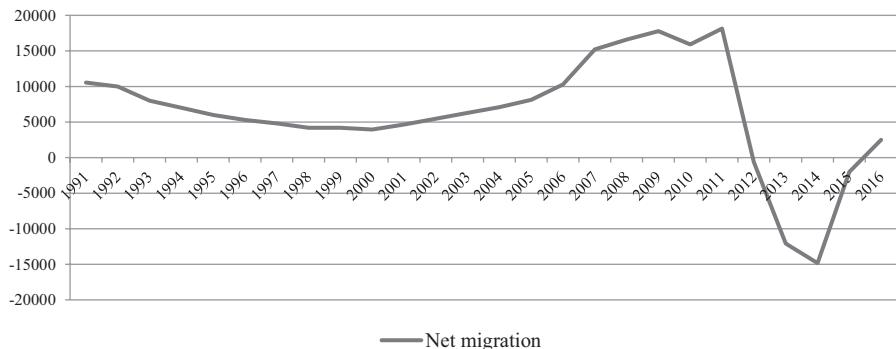
Figure 6.1 shows the net migration rate (i.e. the balance between in-migration and out-migration flows) from 1981 to 2017. Net migration rate was positive during the 1990s with a peak after country's EU membership. Net migration became negative during 2012–2015 due the outbreak of the crisis which slowed inward migration and forced many Cypriots to seek job opportunities abroad (Konstantinidou *this volume*). However, the net migration rate became again positive since 2016, following the recovery of the economy.

As a result of these demographic shifts, the share of foreigners from the total population doubled between 2001 and 2011, reaching 20.3% in the last Census (2011). Most foreign residents originate from EU countries (Greece, the UK, Romania and Bulgaria), while there is also a considerable number of third-country nationals (Russia, Philippines, Sri-Lanka, Syria, Georgia). According to recent Eurostat data on population by citizenship,<sup>2</sup> the share of EU nationals residing in Cyprus was 13.2% (or 114 thousand persons) in 2017 while the share of third-country nationals was 3.9% (or 34 thousand persons) the same year. It is also worth mentioning that the number of asylum seekers in Cyprus has been increasing since 2013, mostly due to the geopolitical tensions in the Middle East area. In 2017, the number of first time applicants almost doubled compared to 2016 (from 2840 to 4475 persons). Most asylum seekers come from Syria.

Finally, Cyprus is a country with a large number of emigrants scattered around the globe. According to the Service for Overseas and Repatriated Cypriots of the

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<sup>2</sup>Eurostat Online Database, Table: [migr\_pop1ctz], accessed on 19/03/2019.



**Fig. 6.1** Net Migration in Cyprus, 1991–2016. (Source: Statistical Service of Cyprus)

Foreign Ministry, there are 315,000 thousand Cypriots in Europe (mostly in UK and Greece), 86,000 thousand in Oceania (Australia and New Zealand), 52,000 in America (USA and Canada) and 30,000 thousand in Africa (mostly in South Africa).

## 6.2 Migration and Social Protection in Cyprus

Both nationals and foreign citizens have access to a comprehensive package of contributory and non-contributory benefits covering several contingencies including unemployment, sickness, disability, maternity and paternity, income deprivation and old age. The general rule is that contributory benefits, typically linked with employment, are open to all at equal terms irrespectively of nationality, while the EU social security coordination rules as well as a number of bilateral social security agreements protect social security rights through enabling the aggregation of periods of insurance and residence. Access to non-contributory benefits (mostly family benefits and minimum income support) is more complicated as residence-related criteria are usually required for claiming these benefits; thereby, creating some differences between national citizens and recent migrants. Healthcare is a very problematic area of public provision, mostly affecting third country nationals. Yet, a recently implemented reform promises to fill the gaps in the provision of services and reduce inequalities.

### 6.2.1 Unemployment

The unemployment benefit scheme in Cyprus is administrated by the MLWSI in the context of SIS. The beneficiaries of the scheme are involuntary unemployed persons aged between 16 and 63 who are legally residing in Cyprus and satisfy the relevant insurance conditions. Self-employed persons are excluded from the scheme. The duration of the benefit is 156 working days for each period of employment interruption. The recipient should satisfy the following insurance conditions:

- has paid actual basic insurance contributions at least equal to 0.5 of the insurance point,<sup>3</sup>
- has been insured for at least 26 weeks before the termination of employment,
- has paid actual or assimilated insurance equal to at least 0.39 of the insurance point within the relevant contribution year.

The unemployment benefit consists of a basic and a supplementary part.<sup>4</sup> The weekly rate of the basic benefit is equal to 60% of the weekly basic insurable earnings of the last year. This rate increases to 80%, 90% and 100% for one, two or three dependants respectively. The weekly rate of the supplementary part is equal to 50% of the average weekly insurable earnings exceeding the basic insurable earnings of the last year up to a maximum amount. While receiving unemployment benefits, recipients must regularly visit the Unemployment Office on specific days and times.

There are no statutory differences in terms of conditions of access and coverage between nationals and foreigners. However, EU citizens are required to submit, additionally to the documents required for nationals, a registration certificate from the Civil Registry and Migration Department,<sup>5</sup> whereas non-EU foreigners need to submit a temporary residence permit or immigration permit.<sup>6</sup> National citizens residing abroad are not entitled to unemployment benefits (with the exception of Cypriots working abroad for a Cypriot employer). However, the benefit can be exported following the rules of EU Social Security Coordination. On that basis, a registered unemployed in Cyprus may look for a job in another member state by exporting the unemployment benefit to this country for a period of three months.

### **6.2.2 *Health Care***

Access to public healthcare services (free of charge or at a reduced charge) is provided through the issuance of a medical card (*karta nosiliás*). Registering with the scheme is not compulsory, but eligible recipients should meet the following conditions<sup>7</sup>:

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<sup>3</sup> Actual and assimilated insurable earnings are converted into insurance points. One insurance point is equal to 52 times the weekly basic amount of insurable earnings (€ 9068 in annual terms in 2017).

<sup>4</sup> A single payment is credited to the recipient. However, the basic and supplementary parts are differently calculated.

<sup>5</sup> Nationals from member states who intend to stay and work in Cyprus are required to apply for a registration certificate following a standard and simple procedure. In order to apply for the certificate, they must complete a standard form, present their ID cards/passports, submit two photos and pay a small fee.

<sup>6</sup> Immigration permits have an indefinite duration.

<sup>7</sup> According to the Government Medical Institutions and Services General Regulations 2000 to 2013.

- are either Cypriots or European citizens who reside permanently in Cyprus,
- have paid insurance contributions for at least three years (assimilated insurance is counted),
- have submitted personal income tax declaration at the date of application,
- their annual income should not exceed €15,400 (single person),
- their annual income should not exceed €30,750 increased by €1700 for each dependent child, if applicable.

Persons suffering from chronic diseases and GMI beneficiaries are excluded from these criteria, while civil servants are compulsory insured paying a 1.5% contribution calculated on their monthly emoluments. Medical card holders are subject to medical co-payments.<sup>8</sup> However, emergency care is provided free of charge to all individuals, irrespective of their income or citizenship.

As for cash benefits in case of sickness, these contributory benefits are available to employees and self-employed who are incapable for work. Sickness benefits are granted for maximum 156 days for each period of employment disruption.<sup>9</sup> In order to qualify as eligible claimants, individuals must have paid actual basic insurance at least equal to 0.5 of the insurance point, have been insured for at least 26 weeks and have paid (actual or assimilated) insurance at least equal to 0.39 of the insurance point during the relevant contribution year. The level of the benefit depends on the insurable earnings and the number of dependants. The benefit is not payable if the employed person continues to receive a full wage during sickness. In case of a reduced wage, the sum of the benefit and the reduced wage should not exceed the full wage. There are no standard rules concerning sick leaves. Several practices exist in the market, varying in accordance to the specific collective agreements or individual contracts signed between employees and employers.

Employees and self-employed who are permanently incapable of work (i.e. unable to gain from their normal economic activity income above one third of the amount earned by a healthy person with the same occupation and level of education or, in the case of persons aged from 60 to 63, above half of that amount) can claim invalidity benefits. The following insurance conditions should be satisfied:

- at least three actual basic insurance points and being insured for at least 156 weeks,
- weekly average insurable earnings (actual or assimilated) equal to at least 25% of the weekly amount of the basic insurable earnings in the relevant period,
- (actual or assimilated) insurance equal to at least 0.39 of the insurance point within the relevant contribution year or actual or assimilated insurance equal to at least 0.39 of the insurance point on average within the last two relevant contribution years.

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<sup>8</sup>For example, €3 for a visit to a General Practitioner, €0.50 for each prescribed pharmaceutical product and €0.50 for each laboratory test with a maximum charge of €10 per medicine prescription.

<sup>9</sup>The payment may be extended if the insured person meets certain insurance requirements and he/she is not expected to remain permanently incapable to work.

The level of the pension depends on insurable earnings, number of dependants and the degree of loss of earning capacity.

Overall, the provision of healthcare services is the most problematic policy area in terms of access of foreigners to social protection in Cyprus. The medical card is issued only to Cypriots and EU citizens (including European Economic Area, EEA, and Swiss citizens) who reside permanently in Cyprus. Non-EU foreigners are excluded from the medical card scheme and have to bear the full financial costs of their treatment if they make use of public services. Thus, third-country nationals who have immigrated to Cyprus for reasons other than international protection are not entitled to healthcare coverage and either stay uninsured or might be required to possess a healthcare insurance contract with a private insurance company. In many cases, these contracts come with limited coverage, while significant restrictions make access to and utilization of services quite problematic (Kantarlis et al. 2019). Hence, third-country nationals in Cyprus have a high percentage of unmet health needs compared to other groups (Kantarlis et al. 2014; Theodorou et al. 2018). Finally, in regard to sickness and incapacity benefits, there are not statutory provisions creating disparities between national and foreign citizens, while the exportability of these benefits ensures that national citizens who have moved abroad to EU countries can continue receiving the payments without impediments.

### **6.2.3 *Pensions***

The first pillar of the pension system consists of the Social Insurance Scheme (SIS) and the Social Pension Scheme. SIS is a compulsory earnings-related scheme covering all employed and self-employed persons in Cyprus. Voluntary insurance is possible for persons who wish to continue insurance after a period of compulsory insurance and Cypriots working abroad in the service of a Cypriot employer. The social pension is a flat-rate non-contributory pension provided to persons with no access to other pensions or similar payments that exceeds the level of the social pension.

The statutory retirement age is 65, with a possibility of early retirement at the age of 63. The total contribution rate for employees is 20.2% applied on the insurable earnings of the employee (with an upper ceiling of €4533) and is paid 7.8% by the employee, 7.8% by the employer and 4.6% by the government. The contribution rate for the self-employed is 19.2% (paid by themselves and the government). The total contribution rates are programmed to increase by 1.3 percentage points every five years up to 2039. Early retirement is discouraged through financial disincentives, while prolongation of working life is encouraged through financial incentives until the age of 68. Old age pensions consist of a basic and a supplementary part. Their calculation is based on the contributory period, the level of gross insurable earnings and the number of dependants.

The social pension is not means-tested, however certain residence restrictions apply.<sup>10</sup> In particular, recipients should be permanent residents of Cyprus and should have resided in Cyprus, EU, EEA or Switzerland for at least 20 years after the age of 40 or for at least 35 years after the age of 18. Social pension is calculated as 81% of the basic old age pension.

There are no statutory differences in terms of conditions of access to old age pensions between national and foreign citizens. The aggregation of periods of insurance is possible in the context of EU Social Security Coordination. However, social pensions are payable only to nationals and foreigners who are permanently residing in Cyprus. The aggregation of residence periods in Cyprus, EU countries, EEA and Switzerland is possible.

#### **6.2.4 Family Benefits**

Income support to families is provided through contributory and non-contributory benefits. Contributory family benefits are provided by the SIS and cover employees and self-employed persons, as well as their dependants. Non-contributory family benefits are provided in a universal or means-tested basis and cover all families fulfilling the relevant conditions. Family benefits are not subject to taxes and social insurance contributions.

The *child benefit* is a means-tested non-contributory benefit paid to all families with children, permanently residing in Cyprus.<sup>11</sup> Its annual level ranges from €345 to €1675 per child depending on family structure and income. The *single parent benefit* is also means-tested. The eligibility criteria for the child and the single parent benefit require five years of permanent residency in the country.

Parents are also entitled to maternity and paternity benefits. The *maternity benefit* is a contributory benefit payable to employed and self-employed mothers for 18 weeks. Certain contribution-related conditions should be satisfied. The amount of the benefit is calculated based on the insurable earnings of the recipient. However, the sum of the reduced wage (if any) and the benefit cannot exceed the full wage. The *paternity benefit* is payable to employed fathers at the same conditions as the maternity benefit, with the exception that its duration is 2 weeks.

There are not statutory differences between nationals and foreigners in regard to access to family-related contributory benefits. For non-contributory benefits, there is a residency requirement which might impact on migrants' access to family benefits. Specifically, the eligibility conditions require legally and continuously residing in the country for five years before successfully applying for child and/or single parent benefits. However, periods of residence in other EU Member States, EEA and Switzerland can be aggregated with periods of residency in Cyprus. Thus, this

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<sup>10</sup>According to Social Pension Law of 1995 and modifications.

<sup>11</sup>According to Child Benefit Law of 2002 to 2017.

restriction effectively excludes newcomers from third countries. Furthermore, child and single parent benefits cover families whose children reside with their parents. This provision restricts access to migrants whose children reside in their country of origin (most probably third-country nationals working in Cyprus on temporary residence permits).

### **6.2.5 *Guaranteed Minimum Resources***

The Guaranteed Minimum Income (GMI) scheme<sup>12</sup> was introduced in 2014 as a means-tested non-contributory top-up benefit whose scope is to ensure a minimum acceptable standard of living to all persons legally residing in Cyprus (Koutsampelas 2016). The GMI is calculated as the difference between a basic income level and the family (or personal) income of the recipient. The value of basic income is currently set at €480 per month for a single person and increases with the size of the recipient unit. The benefit is paid until the end of need and as long as the eligibility conditions are met. GMI beneficiaries have also access to other benefits such as a housing allowance, child care subsidisation, in kind healthcare benefits and long-term care related cash benefits.

All income and properties<sup>13</sup> of the claimant are taken into account in order to determine the eligibility of the benefit. The level of the benefit depends on the family income<sup>14</sup> and the eligibility conditions consist of job-, age- and residency-related criteria. Recipients are asked to register with the Public Employment Services (PES), accept job offers, not have resigned six months (or less) before the application day or while receiving the benefit, participate in vocational training, seminars or communal services (if offered) and accept personal tutoring from PES counsellors.

Furthermore, the applicant must be at least 28 years old (with some exceptions). Finally, the residence criterion requires that all eligible recipients should have continuously<sup>15</sup> and legally resided in Cyprus at least for five years before claiming the benefit. This means that EU and non-EU citizens have access to GMI benefits in Cyprus as long as they satisfy this residence requirement. In the case of GMI, the aggregation of periods of residence in other countries is not possible. Furthermore, non-EU foreigners ought to have been granted the long-term residence status as defined by the relevant law<sup>16</sup> before applying for the GMI. This provision excludes

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<sup>12</sup>The scheme is regulated by the Guaranteed Minimum Income and Social Benefits Law of 2014 to 2017.

<sup>13</sup>Including those located abroad.

<sup>14</sup>Certain incomes are not taken into account in the means-testing, while income from employment is partially excluded with the purpose of reducing labour market disincentives.

<sup>15</sup>Temporary absence from the country is possible if its duration is below one month or if it is related with health issues or studying abroad.

<sup>16</sup>Alien and Immigration Law, Chap. 105.

third-country nationals on short term residence permits. Finally, nationals residing abroad do not have access to GMI support; nor is this benefit exportable.

### ***6.2.6 Sanctions and Bilateral/Multilateral Social Security Agreements***

Residence related criteria, such as proving permanent residency and/or completing certain periods of residence, are only required for claiming non-contributory benefits. However, in most cases, the aggregation of periods of residence is possible for those who have lived in more than one country in the EU, EEA and Switzerland. GMI recipiency, in addition to five years of continuously residing in Cyprus, also requires the status of long-term resident for non-EU foreign citizens. The process of applying for long-term residence can be complicated in some cases. The examination period of an application can take up to six months, while the applicant should successfully submit a number of certificates and documents and, among others, to prove that he/she has the means to economically maintain himself/herself without depending on social benefits. To assess these resources, the pertinent authorities might take into account applicants' income from full-time employment, other sources of income, cost of living, employment contract (which should be either open-ended or longer than 18 months), housing conditions and economic sustainability of business activities (if any).

In general, according to legislation, applying for a residence permit and/or family reunification requires that the applicant has adequate and stable economic sources, without relying on the welfare system. No particular benefits are specified in the legislation; however, benefit recipiency might cause hindrances. As for the issue of exportability, contributory benefits are in most cases exportable, especially pensions and especially to EU destinations. On the other hand, restrictions are applied on non-contributory benefits. For example, the social pension and the GMI are clearly residence-based benefits, whose eligibility is lost if the recipient moves abroad. Additionally, it is important to note that the non-permanent status of several migrant groups imposes barriers to access to pensions. In particular, many third-country nationals are on temporary permits (usually of four years; often renewed for two extra years) and if they fail to renew such permits, they have to leave the country (or stay illegally), before accumulating adequate pension rights. In that case, and because their periods of insurance in Cyprus might not be taken into account in their homelands, they are entitled to a lump sum pension benefit when they reach the pensionable age.

Last but not least, Cyprus has concluded bilateral social security agreements with 6 non-EU countries (Egypt, Canada, Australia, Switzerland, Serbia and Syria). It is worth mentioning that, out of these countries, Canada and Australia belong to the top five destinations for Cypriots moving abroad (Konstantinidou [this volume](#)). The scope of these agreements is to ensure the principle of equal rights (or

non-discrimination), to enable the aggregation of periods of insurance and residence between the two countries, to facilitate the exportation of those benefits covered by the agreements by eliminating any restrictions on payments and, finally, to avoid the payment of double contributions. The agreements typically cover contributory pensions and, in some cases, certain short-term contributory benefits. For example, the agreement with Canada covers old age pensions, invalidity pensions, widow's pensions, orphan's pensions and the funeral grants. In addition to pensions, the agreement with Serbia also covers the maternity benefit, the birth grant, the sickness benefit, the unemployment benefit, the employment injury benefits and the funeral grant.

### 6.3 Conclusions

An in-depth analysis of the current regulatory framework in Cyprus reveals the existence of few statutory provisions differentiating the conditions of access to social protection between national and foreign citizens. However, this was not always the case. Approaching the issue from a historical perspective, it can be said that the architecture of the social protection system has become increasingly inclusive during the last decade. An illustrating example of this trend is the on-going healthcare reform (expected to be completed in 2020) which aims, among other things, to lift a major barrier for third-country nationals who until now had to rely on private medical insurance contracts.

There are two potential explanations of these recent policy developments. The first is the gradual europeanisation of social policy in Cyprus which entailed the transposition of many EU Directives into the national legislation (Ioannou 2008) and affected several policy areas including migrants' social rights. The influence of the EU extends beyond legislative initiatives and includes the exchange of ideas and good practices, the set of common goals and policy objectives including benchmarking, the use of EU funds in shaping national policy as well as the political weight of non-legal binding instruments.<sup>17</sup> A second explanation is related to the increasing economic and social importance of a growing migrant workforce whose diverse needs ought to be catered, at least to a certain degree, by the welfare system.

Having said that, some differences in provisions still exist. These differences are observed in regard to non-contributory benefits and mostly affect non-EU foreign residents. Most importantly, entitlement to non-contributory benefits typically requires a minimum period of residence in the country. For example, entitlement to child benefits requires five years of continuous and legal residence in Cyprus, with aggregation of periods of residence in other countries (i.e. EU, EEA and Switzerland)

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<sup>17</sup>Note that the healthcare reform was systematically included in the country-specific European Council recommendations to Cyprus, see for example: Council Recommendation on the 2018 National Reform Programme of Cyprus and delivering a Council opinion on the 2018 Stability Programme of Cyprus.

being possible for some benefits (e.g. child benefits) and not possible for others (GMI). As far as GMI is concerned, non-EU foreigners should have acquired long-term resident status, additionally to five years of continuous and legal residence in Cyprus. This restriction effectively excludes third-country nationals with fixed-term residence permits.

Furthermore, until now, non-EU citizens were explicitly excluded from the provision of free of charge access to public healthcare, meaning that they had to rely on private medical insurance. Nevertheless, the new National Healthcare System, which is expected to be in full operation in 2020, will provide universal coverage to all citizens thereby filling an important gap in social protection and reducing health inequalities.

Access to contributory benefits depends on recipient's accumulated social insurance contributions (and/or period of employment) and does not depend on citizenship, type of residence permits or other migration-related conditions. As a result, the rules defining eligibility are uniform. Moreover, with the obvious exception of old age pensions, the required minimum periods of insurance are not particularly long, so as to implicitly set barriers to migrants on fixed-term residence permits, while the aggregation of periods of insurance is possible for persons previously working in other EU countries, EEA, Switzerland or countries covered by bilateral social security agreements.

As for national citizens residing abroad, there are not specific welfare schemes targeting this particular group.<sup>18</sup> Yet, they can receive benefits from homeland if they have worked in Cyprus before moving abroad. In most cases, these benefits (typically contributory old age pensions) are exportable to their countries of residence. Furthermore, if they reside and/or work in EU, EEA and Switzerland, periods of residence and insurance in Cyprus count for claiming benefits from the social security system of the country of residence.

Thus the overall picture is that after the implementation of the healthcare reform there will be very few statutory provisions differentiating access to benefits between Cypriot citizens and migrants. These remaining disparities are mostly associated with non-contributory benefits and take the form of residence-related criteria. These criteria might be understood as necessary to fence off public worries about welfare migration, although such incidences are not common in Cyprus.

Nevertheless, it is also important to highlight that the lack of wide disparities in the statutory provisions between nationals and foreigners does not guarantee the equally effective use of these resources by the two groups. In some cases, even the provision of universal coverage does not guarantee equity when the focus lies on very vulnerable groups, which face multidimensional disadvantages in terms of inadequate knowledge of language, perceived stereotypes, limited awareness and enforcement of their social rights, marginalisation and social exclusion. Furthermore, a large part of the welfare state is based on earnings-related contributory benefits. This means that labour market inequalities (e.g. wage gaps between ethnic groups)

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<sup>18</sup>Cypriots working abroad at the service of a Cypriot employer are an exception.

translate to disparities in social provisions. On that basis, to have the complete picture, it is imperative to assess the capacity of the social protection system to effectively reduce poverty among migrants.

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# Chapter 7

## Migrants' Access to Social Protection in the Czech Republic



Kristina Koldinská

### 7.1 Overview of the Welfare System and Main Migration Features in the Czech Republic

#### 7.1.1 *Main Characteristics of the National Social Security System*

The modern Czech social security system finds its origins in Taafe's reforms since 1880s that applied to the whole Austro-Hungarian Monarchy, including the Czech lands. The Czech social security system is therefore part of the Bismarkian model of social security, with big emphasis on social insurance. Czechoslovakia, established in 1918, adopted the Austro-Hungarian legislation. Already in the 1920s, a modern unified system of social security was adopted through Act No. 221/1924. The social insurance of that time included almost all employees in all branches and through it, social security benefits in case of old-age, invalidity and sickness (including maternity) were provided. In 1948, Act No. 99/1948 Coll., on national insurance was adopted. Inspired by the British Beveridgean model, this act was substantially changed in the 1950s, due to requirements of the communist society. The whole social security system was centralized and statized, and the social insurance principle was practically abolished. As of beginning of 1990s, Czechoslovakia and from 1993, the Czech Republic, have been undergoing many reforms, including social security reforms. One of first steps was to rebuild the social insurance system and to

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establish the health insurance, which did not exist before. In 1995, a modern unified system of family benefits (state social support) was introduced and the social assistance reform was adopted only in 2006. In 2011, new systems of health care services and benefits for people with disabilities were introduced. The Czech Republic is still waiting for a real pension reform, which is difficult to adopt due to political tentions.

The subjective right to social security in the Czech Republic is declared in the Charter of Fundamental Rights and Freedoms<sup>1</sup> as a component of the constitutional system of the country and in international conventions and treaties ratified by the Czech Republic<sup>2</sup> (see also Pichrt and Koldinská 2016). The European Social Charter adopted in 1961 was ratified by the Czech Republic only in 2000,<sup>3</sup> whereas the European Social Security Code had to wait even longer, being adopted in 2001.<sup>4</sup> The European Union (EU) law also represents an integrated part of the Czech legal system, and so several parts of EU primary law form a source of law regulating social security issues in the Czech Republic.

The conditions and forms under which citizens may claim their constitutional right to social security are set out in implementing acts. These acts define individual forms of social security, including the form of security, its personal and material scope, the eligibility conditions, levels of benefits and their duration, the sources of funding, and the benefit procedure and administration.

The social security system in the Czech Republic comprises the pension, sickness and health insurance systems, as well as the national employment policy system and the non-contributory social benefits systems - state social support (basically, family benefits) and social assistance. The health insurance system is financed via health insurance funds. Other components of the system are financed from the state budget. Contributions to social insurance systems (pensions and sickness insurance) are paid by employers, employees and self-employed persons. These are income of the state budget.

The health insurance, pension insurance and national employment policy system are mandatory for every economically active individual. Some groups are considered insured without having to pay any premiums (students, women on maternity leave, etc.). The pension system covers old-age, invalidity, and survivors pensions, being managed by the Czech Social Security Administration. The calculation of benefits is based on solidarity of insures and amount of contributions. Solidarity however prevails. The sickness insurance scheme is obligatory for employees and voluntary for self-employed. It covers sickness benefits, financial aid for maternity and compensatory allowance for pregnancy and maternity, paternity benefits, care benefits and long-term care benefits. The health insurance is compulsory for anyone

<sup>1</sup> Promulgated by Resolution of the Presidium of the Czech National Council No. 2/1993 Coll.

<sup>2</sup> In particular, the International Covenant on Economic, Social and Cultural Rights, promulgated under No. 120/1976 Coll., and the Conventions of the International Labour Organization No 102 (1952), 128 (1967), 130 (1969), 167 (1988), etc.

<sup>3</sup> Published under No. 14/2000, Collection of International Treaties.

<sup>4</sup> No. 90/2001, Collection of International Treaties.

who resides permanently or is working for an employer based in the Czech Republic. EU citizens who are employed or self-employed in the Czech Republic are also covered. For certain categories (children up to 26 years old with no financial resources, pensioners, recipients of parental allowances, women on maternity leave, jobseekers, etc.), the insurance premiums are paid by the state.

The employment policy system provides earnings-related benefits, although, de facto, this is still a non-contributory system. There is a small part of social insurance contributions dedicated to state employment policy, although unemployment benefits are not dependent on this amount.

The state social support system is a non-contributory system financed from the state budget and administered by the assigned state bodies. By means of the social support system, the state contributes in particular to families with dependent children that are unable to provide for themselves. The tax-financed social assistance benefits include benefits provided to persons with disabilities and the system of assistance in material need. The later targets people with insufficient income, thus trying to ensure the basic needs for living and housing. The social insurance system is financed by contributions from employees and employers. The healthcare system is funded by contributions and taxation (insurees insured by the State), whereas family benefits and social assistance are financed from the state budget through general taxation (Koldinská and Lang 2017; Koldinská and Tröster 2018).

### **7.1.2 *Migration History and Key Policy Developments***

As Blahoutová (2013) argues, Czech lands have historically been characterised as emigration country, whose inhabitants were attracted to other parts of Europe and of the world by promising economic opportunities. The picture of migration inflows and outflows has rapidly changed after 1989 with the democratisation process of the country.

The number of foreigners residing in the country has been steadily increasing. According to the latest statistical data from the Czech Statistical Office,<sup>5</sup> there were 524,142 foreigners residing in the Czech Republic in 2017, out of which 219,708 were EU citizens. Each year, approximately 45,000 people come to the Czech Republic, whereas approximately 18,000 individuals emigrate from the country. Foreigners represent not even 5% of the overall Czech population, which makes the Czech society one of most homogeneous in Europe. This might be one of the most important reasons for the generally closed and hostile attitude of the Czech population towards foreigners.

Regarding intra-EU migrants, the largest groups of foreigners residing in the Czech Republic originate from Slovakia (almost 112,000 individuals), followed by

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<sup>5</sup>Czech Statistical Office (2018). Foreigners in the Czech Republic. Available at: <https://www.czso.cz/documents/10180/61196236/29002718.pdf/571c5d12-3744-4d32-a8e2-e1a0f3f30e28?version=1.2>. Accessed 3 May 2019.

Germany (21,000) and Poland (20,000). The most numerous groups of third-country nationals come from Ukraine (117,000), followed by Vietnam (60,000) and Russia (36,000). The high numbers from the above-mentioned countries can be explained by historical determination (collaboration of socialist Czechoslovakia of that time with Vietnam since 1970s) and cultural and language proximity (Ukraine, but also Russia to a certain extent).

As for non-resident nationals, around 115,000 Czech citizens live and work in other EU Member States, the most popular countries of destination being the United Kingdom (UK), Germany and Austria. In general, the Czech Republic is not a very much migratory nation.

The crucial legal norm regulating the entry and stay of migrants in the Czech Republic is the Aliens Act (Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic). This Act regulates the conditions of entry of foreigners in the Czech Republic and their departure from the country. Generally speaking, the Czech Republic has a quite restrictive migration policy.<sup>6</sup> Especially for third-country nationals, it is crucial to have a long-term residence permit in order to access social benefits. According to Sec. 42 of the Act No. 326/1999 Coll., an application for a long-term residence permit may be filed by a foreign resident who holds a visa for over 90 days and intends to stay temporarily for more than one year in the Czech Republic with the same purpose of residence. The Foreigners Act envisages several situations in which the long-term residence permit can be claimed, including family reunification (Sec. 42a), studies (Sec. 42d), investment (sec. 42n) or research (Sec. 42f).

Foreigners' employment in the Czech Republic is regulated especially by Act No. 435/2004 Coll., on employment and Act No. 262/2006 Coll., Labour Code (see also Tomšej 2019). EU citizens have the right to free movement and therefore need only to register with the foreign police. Third-country nationals can get the employee card or a blue card. The employee card was introduced in 2014 as a new type of long-term residence permit for foreigners residing for more than three months in the Czech Republic for the purpose of employment. In most cases, it already includes both the residence permit and the work permit in the Czech Republic. The employee card is most often issued for the duration of the employment relationship, but for a maximum of two years, with the possibility of repeated renewal. It is possible to apply for an employee card only for a job registered in the central register of job vacancies that can be occupied by an employee card holder - these are jobs that are primarily offered to Czech citizens. The employee card is always linked to the specific job position for which it was issued.

Highly qualified third-country nationals who are looking for a job can apply for work in the Czech Republic with a blue card that is issued only for jobs requiring

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<sup>6</sup> See e.g. the whole debate of Vyszegrad countries with the EU on migration quotas. On Czech migration policy, see e.g. Janda, J. Summary of the discussion on Czech immigration and integration policy in European context. Available at: <https://evropskehodnoty.cz/wp-content/uploads/2013/03/backgroundpaper-Shnut%C3%AD-diskuze-o-migraci-v-%C4%8CR-v-evropsk%C3%A9m-kontextu-.pdf>. Accessed 3 May 2019.

high qualifications. As in the case of the employee card, the blue card can be requested at a locally accessible embassy of the Czech Republic or at the Czech Ministry of the Interior.

## 7.2 Migration and Social Protection in the Czech Republic

The Czech social protection system is quite open to individuals in situation of international mobility, especially mobile EU citizens. The EU coordination rules are correctly applied and, in general, there is no problem for non-national EU citizens to access the Czech social protection system under the same conditions as resident nationals or for Czech citizens to keep their social rights if they decide to move to another EU Member State.

The situation is slightly different for third-country nationals. The Czech social protection system is open to non-EU foreigners who permanently reside in the Czech Republic or work for an employer based in this country. Third-country nationals who do not hold the status of permanent or long-term residents are generally excluded from the social protection system. Gainful activity is decisive for participation in social insurance systems, especially for the sickness and pension insurances. Health care insurance requires either permanent residence or a gainful activity. Non-contributory systems generally require permanent residence. Possibilities to export benefits abroad, or aggregate periods of insurance in the Czech Republic, vary depending on the bilateral social security agreements signed with third countries.

### 7.2.1 *Unemployment*

Unemployment benefits are regulated by Act No. 435/2004 Coll. on employment. Unemployment benefits are calculated based on past earnings, with some ceiling. If there were not taxable earnings prior to unemployment, a theoretical previous earning (settled by the law and modified according to the economic development) applies. There is only one scheme, and even if within the social insurance contributions, a small part is called "contribution to state employment policy", this is not a social insurance contribution as such.

According to Sec. 3 of the Employment Act, "a citizen of another Member State of the European Union and his family member have the same legal status in the legal relations regulated by this Act as a citizen of the Czech Republic. Family members of a citizen of the Czech Republic who are not nationals of the Czech Republic or of any other Member State of the European Union shall have the same legal status as a citizen of the Czech Republic." Sec. 25 also stipulates that "a person seeking employment may be only a natural person who has his/her residence in the Czech

Republic". Employment services are provided to people who reside in the Czech Republic, regardless of their nationality.

Unemployment benefits are payable for up to five months (eight months for those aged 50–55, 11 months for those over 55 years old). All Czech nationals and EU citizens are eligible for this benefit, as long as they are not working or studying; register as jobseekers with the Regional Labour Office and are not eligible for old-age benefits; and have 12 months of basic pension insurance in the past two years. Jobseekers who fail to comply with certain conditions (mainly cooperation with the Regional Labour Office) are suspended from the Labour Office register and must return all benefits that were wrongly paid. They may register again after six months.

EU nationals have access to unemployment benefits under same conditions as resident citizens. Non-EU nationals have access to the system only upon a decision of the Labour Office, which authorises them to seek work in the Czech Republic. This authorisation is based on the possibility to reside legally in the Czech Republic. According to Sec. 89 of the Employment Act, a foreigner may be recruited and employed if he/she holds a valid employee card, an employee transfer card or a blue card, or a valid work permit issued by the Regional Labour Office and a valid residence permit in the Czech Republic. Non-EU foreigners shall request the work permit in writing to the Regional Labour Office prior to their arrival in the Czech Republic. The request can be submitted by foreigners themselves, their employers in the Czech Republic, or through the person with whom foreigners concluded their respective contracts. Nationals residing abroad in EU countries can access unemployment benefits from the Czech Republic, if conditions settled by EU coordination rules are met. Those receiving unemployment benefits from the Czech Republic can temporarily leave the country in search for a job abroad. However, moving abroad on a permanent basis leads to the loss of unemployment benefits, except for nationals who move to another EU Member State who can benefit from a limited export of unemployment benefits for a period of three months.

### **7.2.2 *Health Care***

All permanent residents, employees of companies registered in the Czech Republic and self-employed persons who are subject to the Czech law are compulsorily insured and eligible for public healthcare (Sec. 2 of Act No. 48/1997 Coll., on health insurance). Foreigners who do not meet these conditions can access health care only via private insurances. This is particularly problematic for non-EU foreigners as the requirements of permanent residence or employment in the Czech Republic are strict.<sup>7</sup> Nationals residing abroad can access health benefits in kind from the Czech Republic if conditions settled by coordination rules are met.

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<sup>7</sup> Recently, a case has been brought before the Constitutional Court concerning a citizen of a non-EU country who lived in the Czech Republic for a long time, was employed and paid health insurance contributions. After having spent several years in the Czech Republic, the non-EU foreigner

Insured persons are entitled to free choice of a primary healthcare physician who has a contract with his/her insurance company. There are no restrictions on the patient's choice of the healthcare provider. Patients have direct access to health care, except for non-urgent treatments covered by the public health insurance. In this case, the provider must have a contract with the health insurance company of the person concerned. There is free choice of contracted hospitals after referral by a primary doctor or a specialist.

Sickness insurance is part of the compulsory social insurance scheme for employees whose income from gainful activity is taxable in the Czech Republic (Act No. 187/2006 Coll., on sickness insurance). This part of the insurance scheme is voluntary for self-employed. Sickness benefits are paid subject to the claimant's inability to work as certified by a doctor (from the 4th to the 21st day, a wage compensation is paid by the employers, whereas the benefit is paid from the 22nd day of illness). There is no requirement of a qualifying period of work or residence in the country. To qualify for the benefit, self-employed persons who are insured voluntarily and have selected the amount of the premiums paid for sickness insurance, must have been participating in a sickness insurance scheme for a minimum of three months before the temporary inability to work arose.

Since 2018, two new sickness benefits have been introduced – the paternity benefit<sup>8</sup> and the long-term care benefit.<sup>9</sup> The paternity benefit is granted to a father or husband of the mother of a child, if he takes care after the child and mother for one week during the first six weeks after birth. The long-term care benefit is granted for maximum three months as a compensation of loss of income to a relative of a person in need of care after hospitalisation.

Sickness benefits are granted per calendar day, for a maximum of 380 days from the beginning of the inability to work. To apply for the sickness benefit, claimants need to submit a form certified by a doctor from the first day of illness. Employees whose employment contract has ended but who are still in the "protection period" have the right to receive sickness benefits. The protection period lasts seven days from the day when employment ended. For people employed for a shorter period than their last period of employment, the protection period lasts only for the number of days actually worked. This applies also to people who leave the Czech Republic, if the Czech Republic remains their competent state according to EU coordination rules. Nationals abroad can claim sickness benefits from the Czech Republic if they

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applied for a permanent residence, but she lost her job before her authorisation for permanent residence was issued. During that period, she delivered a baby in a Czech hospital, but had to cover all costs as in that moment she was not insured (she was not employed anymore and did not obtain the permanent residence permit yet). The Constitutional Court ruled that the legislation in this case has no other interpretation and that she was not covered by the health insurance in the moment of delivery – see Pl. ÚS 2/15.

<sup>8</sup>Act No. 148/2017 Coll., amending the Act No. 187/2017 Coll., on sickness insurance. The amendment entered into force as of 1 February 2018.

<sup>9</sup>Act No. 310/2017 Coll., amending the Act No. 187/2017 Coll., on sickness insurance. The amendment entered into force as of 1.6.2018.

meet the conditions for export of benefits settled by the EU coordination rules or bilateral agreements. EU and non-EU foreign residents can access sickness benefits in cash from the Czech Republic under exactly the same eligibility conditions as those applied for national residents.

Invalidity benefits are part of the pension insurance (Act No. 155/1995 Coll., on pensions). Access to the system is guaranteed to all employed or self-employed persons who are tax-residents in the Czech Republic. This condition, which is similar to the one for the sickness insurance, does not depend on residence or citizenship. However, to become tax-resident, one must have the possibility to be legally employed/self-employed in the Czech Republic. Three degrees of invalidity are recognised. The third degree means that the ability to perform any economic activity is reduced by at least 70%. For the second degree, the ability to perform any economic activity is reduced by 50–69%, and by 35–49% for first-degree invalidity. Coverage is granted until the person reaches 65 years old. When a disabled person reaches retirement age, he/she can apply for old-age pension, which will be paid if its amount is higher. Average earnings and the period of insurance determine the amount of the invalidity pension. This pension has two components: a basic amount per month, to which is added a percentage amount related to earnings, and calculated from the personal assessment base and the number of years of insurance. The personal assessment base is based on the average gross earnings over the years preceding the occurrence of invalidity. The formula varies according to the type of pension. The invalidity pension from the Czech Republic can be accessed by nationals residing abroad in EU or non-EU countries if the conditions for exportability settled by the EU coordination rules or bilateral agreements are met.

### **7.2.3 *Pensions***

Access to the Czech pension system is guaranteed to all employed and self-employed persons (either national citizens or foreign residents) who are paying taxes in the Czech Republic based on their gainful activity. The system is based on a compulsory social insurance scheme financed by contributions from employers and employees and providing earnings-related benefits according to the length of insurance. Participation is mandatory for employees, assimilated groups (unemployed, people caring for children/the disabled, people in military service, etc.), and the self-employed. The Pension Insurance Act lists those required to join the pension insurance scheme. Most people become members in the insurance scheme by law, without having to sign up. There is no public non-contributory pension scheme in the Czech Republic. Self-employed individuals must inform the Social Security Administration for the district in which they reside permanently (or, if they do not have a permanent residence in the Czech Republic, the Social Security Administration for the district where they are self-employed) that they have (re)commenced self-employment or cooperation in the self-employment of another person, or that they have terminated their self-employment.

There is also a possibility of voluntary insurance for certain groups, such as individuals older than 18 years who enacted a gainful activity abroad, worked in the Czech Republic for a foreign employer based in a country with which there is no bilateral social security agreement in place – for maximum two years, spouses or registered partners of a civil servant sent abroad, if they followed him/her. In case of a gainful activity abroad, premiums may be paid retrospectively for a period equivalent to up to two years before the application to join the insurance scheme was submitted. Up to ten years of pension insurance may be acquired in this way. Applications are submitted to the Social Security Administration for the district where the applicant resides permanently.

The retirement age in the Czech Republic is currently being prolonged, to reach 65 years as of 2036. The qualifying period of contribution to access a contributory pension is 35 years. There are some credited periods taken into account (maximum three years of unemployment, taking care after a child, etc.). Foreigners generally have to comply with the same regulations as nationals for accessing a pension. Nationals residing abroad in EU and non-EU countries can access the old-age pension from the Czech Republic if the EU coordination rules or bilateral agreement envisage the export of these benefits and conditions are met.

#### ***7.2.4 Family Benefits***

In addition to pre-natal and post-natal care, including free confinement and hospital care, the social security system offers cash benefits for maternity and paternity.

To receive the maternity benefit, employees must have contributed to the sickness insurance fund for at least 270 calendar days within the two years preceding the birth. Self-employed persons must have paid the premiums for sickness insurance and, for at least 180 days, the contributions to the self-employed individuals' sickness insurance scheme during the year preceding the birth. The maternity compensation benefit is granted to pregnant employees or to mothers until the ninth month after birth, if they have been transferred to a position with lower earnings because of the pregnancy; or self-employed and women whose employment came to an end while they were pregnant, the protection period is always six months. EU and non-EU foreigners must meet the same eligibility conditions as resident nationals for accessing maternity benefits from the Czech Republic. Non-resident nationals can claim these benefits from the Czech Republic only if they reside in another EU Member State or in third countries with which there is a bilateral agreement in place covering access to family benefits.

According to the Sickness Insurance Act, the paternity benefit is available for fathers with sickness insurance. Fathers are entitled to up to 70% of their salary for seven calendar days of leave, which can be taken at any time in the six weeks following the childbirth.

Non-contributory family benefits (child allowance, parental allowance, and the birth grant) are regulated by Act No. 117/1995 Coll., on state social support. Sec. 3

of this Act stipulates that state social support benefits are subject only to a natural person if he/she (and dependents) are registered in the Czech Republic for permanent residence, if they are Czech nationals or have permanent residence in the Czech Republic if they are foreigners (the condition is that they have the domicile in the Czech Republic). These family benefits can be provided also when the claimant and his/her family are foreigners who find themselves in specific different situations such as: reported to the Czech Republic for residence or born in the Czech Republic and registered in this country for residence; minors entrusted in the Czech Republic to care which substitute parental or institutional care; those holding a permanent/long-term residence permit; those granted supplementary protection; foreigners holding an employee card; those working in the Czech Republic or who have worked in the Czech Republic for at least six months and are registered as job seekers if they have been granted a long-term residence permit in the Czech Republic; or persons whose entitlement arises from directly applicable EU legislation or self-employed persons. In all these situations, foreigners must have their domicile in the Czech Republic in order to access these benefits.

However, the State Social Support Act stipulates that the child and parental allowances shall be provided even if claimants do not have permanent residence in the Czech Republic if they are dependent children of foreigners who have been issued for at least nine months the card of an internally transferred employee or a card of an internally transferred employee of another EU Member State and are transferred to a business corporation or branch plant based in the Czech Republic, provided that these dependent children and their jointly assessed persons have the domicile in the Czech Republic.

The child allowance is a universal scheme financed by general taxation, providing means-tested, income-related benefits to all residents whose children reside in the Czech Republic. All children who are residents are eligible for this allowance, the benefit is however exportable. The benefit may be paid until compulsory education is completed and entitlement for the child allowance is limited to families with an income under 2.7 times the family's living minimum.

The parental allowance aims to assist parents who provide full-time and regular care for their children. This is a universal system financed by general taxation and provides a flat-rate benefit to persons who are subject to the Czech law or reside in the Czech Republic.<sup>10</sup> Parental benefits are granted until the child is 4 years old. EU and non-EU foreign residents can access these benefits under the same conditions as those applied for national residents. The benefits are exportable only to other EU Member States. Nationals residing in non-EU countries are thus excluded from accessing parental benefits from the Czech Republic.

Family benefits are administered by the Labour Office, its regional offices, and their contact points.

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<sup>10</sup>There are also other types of family related benefits such as the birth grant (one-off benefit for low-income families to help them cover costs related to the birth of their first child). Housing allowances and the death grant are also regulated by this act as family benefits.

### 7.2.5 *Guaranteed Minimum Resources*

Guaranteed minimum resources are provided within the social assistance system regulated by Act No. 111/2006 Coll., on aid in material need and Act No. 110/2006 Coll., on minimum subsistence. The living allowance and the supplement for housing<sup>11</sup> are granted to: residents who are registered for or have the permanent residence in the Czech Republic; residents granted asylum or supplementary protection; foreigners without a permanent residence in the Czech Republic, but whose rights are guaranteed by an international treaty; EU nationals with more than three months of residence (and their family members) if they do not qualify for social benefits (excluding unemployment benefits) from the directly applicable EU legislation in the Czech Republic; foreigners who were previously issued a long-term residence permit in another EU country and later moved to the Czech Republic and their family members, if they have been granted a long-term residence permit in the Czech Republic and they reside in the territory of the Czech Republic.

Act No. 111/2006 Coll. provides also for a legal definition of residence/domicile as follows: "A person is domiciled in the Czech Republic, especially if he or she is long-term resident, performs a gainful activity there, lives here with his or her family, fulfills compulsory school attendance or is constantly preparing for future profession, or there are other important reasons, activities, the interconnection of which shows the connection of this person with the Czech Republic". Due to this link between the guaranteed minimum resources and residence/domicile in the Czech Republic, the benefit is not exportable and national citizens residing abroad are not eligible to claim it under the Czech law.

Social assistance is organised centrally, but benefits are paid by the regional Labour Offices and their contact points. The benefit is means-tested and the willingness to work is the basic condition for being considered in material need. Unless they are in employment or a similar relationship, social assistance recipients must register with the Labour Office as jobseekers, actively search for a job, accept any employment (even short-term or less paid), and participate in active employment policy programmes, public works, public service, etc. Certain persons are excluded from work activities due to age, health status or family situation. Moreover, social work with individuals or families precedes the granting of benefits and social investigations and home visits are an integral part of the evaluation. The guaranteed minimum resources can be granted for an unlimited duration, until the end of need.

Another important aspect regarding the link between migration and access to social benefits in the Czech Republic is related to the bilateral social security agreements signed with third countries. There are 19 such agreements currently in place and all of them are proportional (they offer access to social benefits to foreigners residing in the country and Czech citizens residing in the contracting state). However, not all bilateral agreements cover all the social security areas discussed here. A wide material scope is covered by the agreements with Montenegro, Israel,

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<sup>11</sup> A so-called extraordinary immediate assistance can also be provided to individuals residing in the Czech Republic, although the residence authorisation is not investigated in this case.

Macedonia, Russia, Serbia, Tunisia and Ukraine. These agreements cover maternity, sickness benefits, pensions, accident benefits, family benefits and birth grants. However, other agreements cover only pensions, such as the ones signed with the United States, Québec, Moldova, Korea, Canada, Japan, India, Chile or Australia. As explained above, the three most important non-EU countries of origin of foreigners residing in the Czech Republic are Ukraine, Vietnam and Russia. With Ukraine and Russia, there are bilateral agreements (No. 29/2003 Coll.int.agr. with Ukraine and No. 57/2014 Coll. int.agr. with Russia) and both of them have a wide material scope. There is no bilateral agreement with Vietnam. On the other hand, the United States, Canada and Australia are most important countries of destination for Czech nationals residing abroad. The Czech Republic has signed bilateral agreements with all three countries (No. 85/2008 Coll.int.agr. with the United States, No. 1/2003 Coll.int.agr. with Canada and No. 58/2011 Coll.int.agr. with Australia) and all three agreements cover only pensions.<sup>12</sup>

### 7.3 Conclusions

Generally speaking, the Czech social security system is quite open to EU nationals, due to EU coordination rules. Third-country nationals have access to social security in the Czech Republic especially if they work in the country or have permanent residence. On the other hand, Czech nationals can usually quite easily export their benefits to other countries, especially to EU countries and to non-EU states with which the Czech Republic has bilateral agreements. In case there is no bilateral agreement with a non-EU country, migrant workers are not covered (like in case of Vietnam – see above).

Currently, there are no serious debates or policy proposals about changing the access of foreign residents or non-resident nationals to the Czech social security system. In the case of non-EU citizens, this might be due to the fact that the Czech Republic welcomes only few refugees. Compared to other countries, the non-EU population is not a sizeable one in the Czech Republic, and there are only few nationals of Ukraine, Vietnam and Russia. What is however quite alarming is the fact that there is no bilateral agreement with Vietnam, even if already second and third generations of migrants originating from Vietnam currently reside in the Czech Republic. Many of them however succeeded to obtain the Czech nationality. In general, there is quite some hostility against foreigners from non-EU countries, especially against people from Arabic countries<sup>13</sup> (although this is not a large group in demographic terms); but this has not been translated so far into serious societal or political debates regarding their access to social benefits.

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<sup>12</sup>The list of bilateral agreements is available at: <https://www.cssz.cz/cz/mezinarodni-smlouvy/smlouvy-uzavrene-cr/prehled-smluv.htm>. Accessed 3 May 2019.

<sup>13</sup>See, for instance, the public opinion survey: <https://www.stem.cz/tolerance-ceskych-obcanu-k-cizincum/>. Accessed 20 February 2019.

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# Chapter 8

## Migrants' Access to Social Protection in Denmark



Dorte Sindbjerg Martinsen

### 8.1 Overview of the Welfare System and Main Migration Features in Denmark

#### 8.1.1 *Main Characteristics of the National Social Security System*

The Danish welfare state is together with its Nordic counterparts often presented as distinct. The model has traditionally been characterised as universalist, de-commodified, residence-based, non-contributory and relatively generous (Cornelissen 1997; Cox 2004; Nannestad 2004). Firstly, the Danish welfare state is described as universalist, promoting equality of status among its citizens. In such system, the needy is not distinguished from the non-needy. Welfare universalism benefits the middle class as much as the poor, as benefits are available to all citizens. Social policies are not targeted to low income groups as in the residual welfare state, nor they depend on labour market participation as in the insurance-based welfare state (Korpi and Palme 1998).

Secondly, according to Esping-Andersen's famous welfare worlds, a key feature of the model is the high degree of 'de-commodified' welfare rights (Esping-Andersen 1990). A de-commodified welfare state will thus grant social rights on the basis of citizenship rather than on the basis of market performance, i.e. attachment to the labour market. Thirdly, social rights are granted based on residence (Cornelissen 1997, 32). A person is entitled to welfare because s/he has legal residence, and not qua social contributions or citizenship. Fourthly, benefits have traditionally been tax-financed and not based on contributions. Yet, tax payment is not a

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**Table 8.1** Socio-economic heterogeneity in the European Union (2015)

Member State	GDP per capita in PPS (EU-27 = 100)	Social protection expenditure (in % of GDP)	Social contributions (as % of total social protection receipts)
Belgium	118	29,1	60,3
Bulgaria	47	17,3	50,8
Czech Republic	87	18,6	71,6
Denmark	126	31,1	18,1
Germany	124	28	64,7
Estonia	75	16,2	79,4
Ireland	176	15,6	39,2
Greece	68	26,1	54,7
Spain	89	24,3	54,3
France	106	32	61,1
Italy	96	28,9	49,5
Cyprus	81	21,5	46,1
Latvia	64	14,6	58,1
Lithuania	74	14,8	72,8
Luxembourg	268	21,6	50,4
Hungary	68	19,9	63,6
Malta	92	17,3	39,8
Netherlands	128	28,4	62,3
Austria	127	29,4	62,5
Poland	68	18,7	62,7
Portugal	76	24,8	45,1
Romania	57	14,3	45,1
Slovenia	82	23,5	66,4
Slovakia	77	17,8	67,9
Finland	109	31,1	47,7
Sweden	123	28,7	47,2
United Kingdom	108	28,6	40,1

**Source:** Martinsen and Werner (2018), based on data compiled from the Eurostat database (data files prc\_ppp\_ind, une\_rt\_a, spr\_exp\_sum and spr\_rec\_sumt). Data for Poland in columns 2 and 3 are from 2014, due to unavailability of data for 2015

direct requirement to receive a specific social benefit. Finally, the Danish welfare model has also been characterised by relatively generous benefits and with extensive welfare services (Lindbom 2001).

These characteristics still apply to the Danish welfare state, when compared to its European counterparts. As Table 8.1 demonstrates, among the European Union (EU) Member States, Denmark has the highest share of non-contributory benefits and the second highest social protection expenditure as a percentage of the Gross Domestic Product (GDP), only surpassed by France (Martinsen and Werner 2018). However, it is also important to note that the model has undergone considerable change (Kvist and Greve 2011). During the 1990s, the Danish pension system developed collective and individual private schemes, which supplement the public pension. Also, wage payment during parental leave depends on which collective agreement one is covered by or the individual employer. In addition, some employers grant their employees private healthcare insurance. Thus, a more multi-tiered welfare state has developed in Denmark (Kvist and Greve 2011), where labour

market attachment has come to matter more for the degree and quality of welfare protection.

Due to its key characteristics, the Danish welfare state has sometimes been argued as 'unfit' for migration and EU rules on free movement, because entitlement to welfare does not depend on contribution (Martinsen 2005). Foreigners may thus access the welfare state without necessarily having contributed to it. Before Denmark became member of the European Community (EC), welfare benefits were subject to Danish nationality and guarded by a principle of territoriality. For example, the Danish public pension was granted to all Danish citizens who had resided at least one year in Denmark. As a result of Danish EC membership in 1973, the Danish citizenship clause was waived, but the one year residence rule was changed into a fractional pension rule where pension would be calculated on basis of years of residence in Denmark. A full pension came to require 40 years of residence (Rasmussen 2004).<sup>1</sup> Recently, new residence clauses have been adopted for minimum benefits, unemployment benefits and for family benefits, as will be presented below. Furthermore, a previous period of residence is required to receive study grants. Foreigners will have to have resided five years in Denmark to qualify for study grants. This applies both for EU and non-EU citizens, but is waived for EU workers and persons covered by EU Regulation 883/2004.<sup>2</sup> Danes living abroad will have to have resided two out of the last 10 ten years in Denmark to be entitled to study grants.

### ***8.1.2 Migration History and Key Policy Developments***

Over the past 15 years, Denmark has been the object of international attention and criticism due to its increasingly restrictive immigration policies limiting immigrants and refugees' access to the country and its social benefits. With refusals of accepting the United Nations (UN) quota refugees, controversial bills aimed at impounding the belongings of refugees, and trans-national advertisements signalling the country's cuts in the social benefits of refugees, Denmark's relationship with immigration became increasingly politically controversial. The 2011 national election marked a turn in the history of Danish immigration policy, as immigration occupied an unprecedented central topic on the political agenda and marked the beginning of a much more restrictive approach and negative politicisation of immigrants and refugees.

Until the latter half of the twentieth century, Denmark was a culturally homogeneous country witness to only small inflows of immigrants arriving mainly from other Scandinavian countries. However, with economic growth from the mid-1960s,

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<sup>1</sup> See the amendment on the Danish law on social pension no. 257 and no. 258 of 7 June 1972.

<sup>2</sup> Regulation (EC) No 883/2004 of the European Parliament and the Council of 29 April 2004 on the coordination of social security systems.

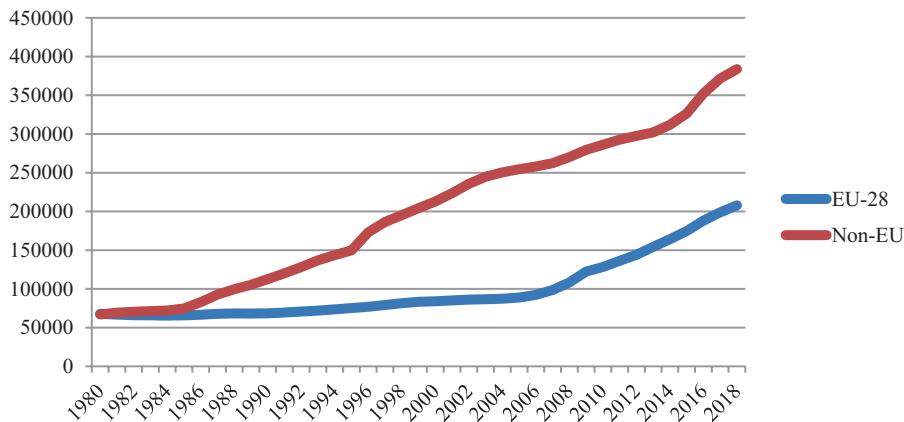
the Danish industry's demands for foreign labour grew. This marked the beginning of Denmark's short history of non-European labour immigration. The arrival of the so-called 'guest workers' from countries such as Morocco, Turkey, Pakistan, and Yugoslavia gave rise to unparalleled and diversified inflows of migrants (Nielsen 2012). Although generally favoured by the employers, the guest workers were met with wider scepticism by trade unions such as the Danish Confederation of Trade Unions (LO) which feared that migration could lead to unemployment and cultural adaptation problems (Jønsson and Petersen 2012). The concerns of the trade unions became particularly articulated during the oil crisis and overall economic decline of the 1970s, which eventually led the Government and the social partners to decide on a total stop for labour immigration in 1973 (Martens and Stenild 2009). This decision also marked the end of the labour immigration phase in Denmark, which has since then primarily taken place within the context of the European Union and the inter-Nordic labour market (Jønsson and Petersen 2012). From now on, immigration from third countries became more associated with refugees.

Until the mid-1980s, the number of refugees in Denmark was limited, consisting mainly of refugees from Hungary, Uganda, Chile, and Vietnam (Ibid.). With the Aliens Act of 1983, the rights of refugees were improved as they were now allowed to stay in the country while their asylum applications were being handled. At the same time, the requirements and conditions for gaining residence and family reunification were simplified. Due to its relatively few requirements for obtaining the refugee status, the act became known for its liberal and humanitarian outlook (Mikkelsen 2008). In the immediate years after its entry into force, thousands of refugees fleeing from conflict and war in Iran, Iraq, and Palestine arrived in Denmark. This development continued in the 1990s, with refugees arriving from Somalia and the former republic of Yugoslavia.

Figure 8.1 shows the total numbers of immigrants from EU and non-EU countries in the period of 1980–2018. Since 1980, immigration from non-EU countries has exceeded immigration from the EU. In 1980, 67,756 EU and 66,949 non-EU immigrants stayed in Denmark. In 2018, the ratio was 207,899 EU immigrants to 383,779 non-EU immigrants. As observed in the figure, this development began around 1985 and has increased since. In 2018, immigrants in Denmark came primarily from Poland (40,601 persons), Syria (35,441 persons) and Turkey (32,924 persons).<sup>3</sup>

The increasing cultural heterogeneity of the population in Denmark, as well as immigration's impact on the social expenditures of the welfare state, became an important issue on the political agenda during the 1990s. The debates of the 1990s revolved mainly around immigrants on social welfare, their missing participation on the labour market as a consequence of the crisis in the 1970s and the vulnerabilities of refugees, and their potential non-integration into Danish society and the labour market (Jønsson 2018). The growing political concern led to several adjustments of the Aliens Act in the 1990s, which restricted family reunification and asylum

<sup>3</sup> Statistics Denmark (2018) "Indvandrere i Danmark 2018".



**Fig. 8.1** Total number of immigrants from EU and non-EU countries in Denmark (1980–2018) (Source: Statistics Denmark. Population 1st of January by sex, age, ancestry, country of origin and citizenship, 1980–2019. Found at [www.statistikbanken.dk](http://www.statistikbanken.dk) (accessed on 10 March 2019))

permits. The later adoption of the Integration Act of 1998, the first law on immigration in the country's history, saw further restrictions and cuts in the rights of refugees. The act proposed three ways to solve the issue of participation: a three-year introduction program of Danish language lessons, education, and employment to all refugees; a geographical distribution of refugee residences; and a special integration allowance with benefit set remarkably lower than social assistance. The latter became particularly controversial as special legislation for immigrants conflicted with the ideals of the universalist welfare model.

Since the Integration Act of 1998, the Danish immigration policy has been influenced by the growing political power of the Danish People's Party and their demands for a stricter course on immigration. This has led to several modifications of the Alien Act in terms of further limitations to gaining residence and asylum, family reunification, and equal treatment in relation to social benefits. In recent years, Denmark has made further cuts in social provisions offered to refugees and extended the periods of time necessary for achieving residence permits. The transformations from a liberal to a more restrictive immigration policy appears to have become the new norm in Danish politics as more and more parties such as the Social Democrats have adopted a restrictive stance to the question of immigration. In 2018, 20,909 Danes emigrated from Denmark. The main countries of destination for Danes emigrating in 2018 were Greenland (1941 persons), the United States (US, 1785 persons) and Sweden (1776 persons).<sup>4</sup>

<sup>4</sup> Source Statistics Denmark: [www.statistikbanken.dk/UDVAN](http://www.statistikbanken.dk/UDVAN) (last accessed 15 April 2020).

## 8.2 Migration and Social Protection in Denmark

Immigrants with the right to reside in Denmark have access to the social protection schemes of the Danish welfare state, i.e. the various cash benefits provided; unemployment benefits, guaranteed minimum benefits and family benefits among other types of benefits, as well as benefits in kind offered by a large public service sector; long term care, healthcare, child care, education among other welfare services. The different eligibility conditions for selected benefits are detailed below.

### 8.2.1 *Unemployment*

Unemployment benefit in Denmark is a voluntary unemployment insurance scheme providing earnings-related benefits. The scheme is financed by contributions from employees and self-employed through membership payment and by the state through general taxes. There is no special unemployment assistance scheme in Denmark.

Entitlement to unemployment benefits depends on membership of and contributions to an unemployment insurance fund for at least one year. The amount paid can be up to 90% of the member's previous work income, with a maximum threshold. Unemployment benefits can be received for a maximum of two years within a three-year period. In order to qualify for unemployment benefits, the person must be registered as job seeker, be available to the employment services and be available for work. Furthermore, the person must actively seek employment and cooperate with the employment office to build up an individual action plan.

The Danish law on unemployment has recently changed in December 2018. The change of law inserted a residence criteria for all beneficiaries (Danes, EU citizens and non-EU nationals alike), stipulating that one has to have resided seven years out of the last 12 years in Denmark. In accordance with EU Regulation 883/2004, the personal scope of the regulation can use the principle of aggregation to fulfill the residence criteria. Residence periods spent in the EU/EEA are treated as periods spent in Denmark, but periods outside the EU/EEA does not count into the seven years residence requirement. Furthermore, the principle of aggregation can be used to fulfill the one-year requirement of unemployment insurance. This means that an EU citizen who has been insured against unemployment in another EU state for nine months, for example, will only need to pay contributions to a Danish social insurance fund for the remaining three months, before being entitled to unemployment benefits. Denmark, however, has a special clause in Regulation 883/2004, according to which one will have to have been member of a Danish unemployment insurance fund at least three months before being able to use the principle of aggregation. The principle of aggregation, nevertheless, implies that a migrant worker can have more immediate access to Danish unemployment benefits than the national worker who stayed within Denmark. However, figures show that very few have aggregated

periods from other Member States to open up Danish unemployment benefits. In 2017, only 41 EU or EEA citizens had used the principle of aggregation to be entitled to Danish unemployment benefits after fulfilling the three months residence clause (see the Minister of Employment's answer to parliamentary question no. S. 340, 12 December 2018). Furthermore, EU Regulation 883/2004 allows for exportability of unemployment benefits for up to three months. The EU law thus waives the Danish residence clause, but only for a limited number of months.

The principle of aggregation and the possibility to export unemployment benefits does not apply for non-EU foreigners. In terms of exportability, this implies that non-EU foreigners cannot bring their unemployment benefit with them for up to three months to look for employment outside Denmark. The bilateral social security agreements adopted with the first three non-EU countries of destination for Danes abroad do not cover unemployment benefits. When it comes to bilateral social security agreements with the first three main non-EU countries of origin of foreigners residing in Denmark, these set out that nationals of these countries will be treated equally with Danish citizens concerning unemployment benefits.

### **8.2.2 *Health Care***

Danish healthcare is provided by means of a national health service (NHS) system, which offers healthcare as benefits-in-kind, tax-financed, largely free of charge and publicly supplied. The system can be characterised as a decentralised, public, integrated healthcare system in which the responsibility for organising and delivering services is placed in the hands of the five Danish regions (Martinsen and Vrangbæk 2008). Primary care services are provided by private practitioners, i.e. general practitioners (GPs), but are publicly funded and firmly integrated into regional planning. General practitioners serve as important gatekeepers in the system, referring patients to specialised care and hospital care. Treatment is largely provided free of charge, but co-payments exist, primarily for medicine, dentistry and physiotherapy. All residents in Denmark are entitled to healthcare, irrespective of nationality. This means that nationals, EU citizens and non-EU foreigners have the same rights. The Danish healthcare system is organised by a principle of territoriality. Authorisation to healthcare treatment abroad is only seldom given (Martinsen and Mayoral Diaz-Asensio 2016). Danish citizens residing abroad are not entitled to Danish healthcare. If a Danish citizen residing abroad wants healthcare treatment in Denmark, s/he will have to pay the full costs and make the necessary arrangements with the public hospital him/herself.

All employees and self-employed, including helping spouses, are entitled to cash benefits in case of sickness. Sickness benefits can be received up to 22 weeks. The requirement is to be unable to work due to sickness. No later than four weeks after the beginning of the sickness leave, the employer shall call for a meeting to work out a plan for the return to work. A written declaration from the doctor stating the possibilities of working can be demanded. The general rule is that one has to reside

and pay taxes in Denmark to be entitled to cash sickness benefits. However, a person may, in particular circumstances, leave the country without losing the sickness benefit. That is if a stay abroad has been medically advised or similar situations. EU Regulation 883/2004 allows EU citizens to take their sickness benefits with them to another EU country. Bilateral agreements with non-EU countries may also stipulate this right. However, if staying abroad while on cash sickness benefits, the person will have to meet the same requirements as if staying in Denmark, show up at the meeting called by the employer to design a recovery plan and hand in a written declaration from the doctor, if demanded.

Invalidity benefit is a social pension in Denmark. The invalidity benefit is calculated according to the years of residence in Denmark, in the same way as the public pension. To be granted a full pension, one has to have resided 40 years in total. If one has resided less, a share pension is paid, for example 3/40, 7/40, 13/40 and so on. To open up pension rights, Danes and EU citizens will have to have resided at least three years in Denmark. If covered by EU Regulation 883/2004, EU citizens can use the principle of aggregation and qualify after one year of residence. Non-EU foreigners will have to have resided at least 10 years in Denmark, five years immediately before the pension is payable. This benefit can be exported, also permanently.

The bilateral social security agreements adopted with the first three non-EU countries of destination for Danes abroad do not cover healthcare. When it comes to bilateral social security agreements with the first three main non-EU countries of origin of foreigners residing in Denmark, these state that nationals of these countries will be treated equally with Danish citizens concerning healthcare.

### 8.2.3 *Pensions*

Denmark has a multi-tiered pension system (Kvist and Greve 2011). The public pension (*folkepension*) is the basic, flat-rate, universal pension who all residents or those who have earned pension rights by means of previous residence are entitled to. This pension is not means tested. As noted above, before Danish EC membership in 1973, this pension was granted on the basis of Danish nationality. The EC *acquis* made it necessary to change this and instead, the Danish Government managed to negotiate a 40 years residence clause to be entitled to full public pension. This means that, as with invalidity benefits (*førtidspension*) described above, one has to have resided 40 years in total to be granted a full pension. If one has resided less, a share pension is paid, for example 3/40, 7/40, 13/40, etc. To open up pension rights, Danes and EU citizens will have to have resided at least three years in Denmark. If covered by EU Regulation 883/2004, EU citizens can use the principle of aggregation and qualify after one year of residence. Non-EU foreigners will have to have resided at least 10 years in Denmark, five years immediately before the pension is payable. The old-age pension can be exported to other countries.

Denmark also has a compulsory social insurance scheme on defined-contributions covering employees and recipients of social security, i.e. the ATP scheme. All employed persons as well as residents on social transfer will pay into the ATP scheme. For employed persons, the monthly contribution is paid by the employed and the employer. For residents on social transfer, the contribution is deducted from the monthly allowance. However, this ATP scheme is a rather minor additional pension in comparison with the public pension (*folkepension*).

In addition to these public pensions, many employees have labour market pensions agreed between the social partners and regulated by collective agreements. Furthermore, individuals set up private pension savings schemes with their bank or a pension fund. Thus, the pension replacement rates in Denmark differ considerably between individuals.

The bilateral social security agreements with the first three non-EU destination countries for Danes abroad cover old-age pension. This pension is also covered by the bilateral social security agreements with the first three main non-EU countries of origin of foreigners residing in Denmark.

#### **8.2.4 Family Benefits**

Family benefits in Denmark cover parental and child benefits. Concerning parental benefits, this is a universal protection scheme for employees and self-employed with earnings-related benefits. Employees will have to have worked at least 13 weeks before parental leave to be entitled. Self-employed shall have been self-employed at least six months within the last 12 months to be entitled. Unemployed with unemployment insurance will be entitled to unemployment benefits. Non-insured unemployed will be entitled to social assistance during their leave. Parents get 52 weeks of paid parental leave in total. The general rule is that the mother has the right to four weeks of leave directly before the planned birth and then to a further 14 weeks of leave after birth. The father is entitled to take two weeks of leave during the first 14 weeks after the birth of the child. Then 32 weeks follow where the mother and father can freely share leave between them. They can choose to be on parental leave at the same time or in periods one after the other. While on parental leave, the beneficiary does not have to reside in Denmark.

Child benefits are a tax-financed universal scheme covering all residents. Benefits are granted depending on the age of the child and the income of the family. There are two types of family benefits; the universal child benefit and the child allowance (*børnetilskud*), which is means-tested and granted to residents with extra needs. All residents with at least six months of residency or employment in Denmark in the previous 10 years prior to each instalment are entitled to the universal child benefit. To be eligible for the child allowance, one has to be a national resident or a foreign resident with one-three years of prior residence in Denmark.

EU and non-EU nationals' access and exportability of the universal child benefit has been a quite salient topic in Danish politics and the public debate. When

negotiating the budget act in autumn 2010, the Danish Peoples Party (DPP) demanded that in order to support the Government's budget proposal, restrictions on EU citizens' right to child benefits should be adopted. The Government thus initiated a reform process, mandating the executive to find a solution between EU obligations and domestic politics. At first, DPP required a residence clause of 15 years (Tynell 2014, 215), but the Government noted that this would go against EU law. In the end, the Danish Parliament adopted a two years residence or work requirement in Denmark for residents to be entitled to full Danish child benefits. After half a year, one would be entitled to 25% of the full amount. After one year, to 50% of the full amount, whereas 1.5 years would grant 75% of the full amount. The restriction became effective from 1st of January 2012. However, for EU citizens, the residence clause did not continue for long. In July 2012, a German worker in Denmark complained about his unequal right to Danish child benefits and an EU pilot case was sent to the Commission. The Commission send an opening letter to the Government, and as from 18th of June 2013, the Ministry of Taxation announced that Regulation 883/2004's principle of aggregation now would apply to EU citizens. This means that the periods where an EU citizen has earned rights to child benefits in another Member State is aggregated to the periods having worked or resided in Denmark. For non-EU nationals, the two years residence clause, however, still applies.

The bilateral social security agreements, which have been adopted with the first three non-EU countries of destination for Danes abroad do not cover family benefits. When it comes to bilateral social security agreements with the first three main non-EU countries of origin of foreigners residing in Denmark, these state that nationals of these countries will be treated equally with Danish citizens concerning family benefits.

### **8.2.5 *Guaranteed Minimum Resources***

Guaranteed minimum resources are tax-financed non-contributory benefits in Denmark. The benefit is divided into three types: social assistance (*kontanthjælp*), educational assistance (*uddannelseshjælp*) and integration allowance (*integrationsydelse*). Social assistance grants a higher amount, whereas educational assistance and integration allowance are lower amounts. The benefits are means tested and offered when a person is, due to particular circumstances (e.g. sickness, unemployment or the like), for a shorter or longer period without sufficient means to meet his/her requirements or those of his/her family. Personal circumstances are relatively frequently reassessed. The benefit is granted until the end of need or as long as the requirements are met.

Nationals and foreigners will have to have resided seven out of the last eight years in Denmark to be eligible for social assistance and educational allowance unless they according to EU law are entitled to the benefit. This basically means if they have worker status according to EU law. If not eligible for social assistance and

educational allowance, the person will be granted integration allowance, which is a lower amount. The grant of minimum benefit is subject to acceptance of an appropriate offer to participate in an activation measure. Payment of social assistance is suspended, if the beneficiary or his/her partner refuses without reason to participate in an activation measure or repeatedly fails to report to a job opportunity in the framework of the activation.

Concerning EU workers' right to social assistance, the entitlement and duration of their benefit is tightly linked to whether or not they retain worker status when losing their job. The involuntarily unemployed retain the status of worker if: a) they have worked more than one year and are registered as jobseekers (in this case, the person has a right to social assistance for more than six months) or; b) they have worked less than one year and registered as a jobseeker, although in this case, the status of worker and the right to receive social assistance is retained for no less than six months. If an EU citizen receives social assistance before having acquired permanent residence, this may negatively affect the right to permanent residence. Bilateral conventions do typically not include minimum guaranteed resources.

### 8.3 Conclusions

Over time, the Danish immigration policy has underwent considerable changes. From a focus on labor immigration and securing the rights of refugees, Denmark has since adopted a much stricter immigration policy, aiming to limit immigrants and refugees access to the country. At the same time, foreigners' access to Danish welfare has been a thorny political issue and considerable change has been implemented.

Denmark has moved from organizing its welfare state on national citizenship and territoriality, into organizing it along the lines of residence. These changes occurred at first when Denmark became member of the EC. Over time, labour market participation has come to matter more for the social protection provided. Furthermore, migrants' access to welfare in Denmark increasingly depend on citizenship and EU related worker status. Residence clauses have been adopted for guaranteed minimum benefits and family benefits. Eligibility depends on years resided in Denmark, unless the applicant qualifies as a worker according to EU law and therefore can aggregate periods of residence from one or several other EU Member States. In sum, social protection in Denmark has become more multi-tiered and more EU commodified.

Immigrants with the right to reside in Denmark have access to the social protection schemes of the Danish welfare state, i.e. the various cash benefits provided; unemployment benefits, guaranteed minimum benefits and family benefits among other types of benefits, as well as the benefits in kind offered by a large public service sector; long term care, healthcare, child care, education among other welfare services. The different eligibility conditions for selected benefits have been detailed above.

The sustainability of the Danish welfare state and migration has been a recurrent theme in the Danish political debate, in particularly portraying the welfare model as vulnerable given that there is no direct link between contributions to the welfare budget via tax and entitlements. In the wake of the 2004 and 2007 EU enlargements, concerns about ‘welfare tourism’ have been raised across the political spectrum. It has, however, been demonstrated that EU citizens have had a positive fiscal impact on the Danish welfare budget over the years (Martinsen and Pons Rotger 2017). Whereas the debate on ‘welfare tourism’ seems to have eased off, the exportability of child benefits for EU citizens remains topical. Thus, currently, the Danish Government works for an indexation of child benefits in relation to Regulation 883/2004.

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# Chapter 9

## Migrants' Access to Social Protection in Estonia



Mare Ainsaar and Ave Roots

### 9.1 Overview of the Welfare System and Main Migration Features in Estonia

#### 9.1.1 *Main Characteristics of the National Social Security System*

The current welfare system in Estonia is a combination of work-based social protection ideas dating back to Soviet Union times and new transformations since the independence period during the last 25 years (Ainsaar 2001; Ainsaar and Kesselmann 2016; Trumm and Ainsaar 2009). The most turbulent changes in the social protection system took place in the 1990s when after splitting up from the Soviet system, Estonia built up a new social protection system and ideology. Contrary to many other ex-Soviet countries who had their own social protection structures already in place during the Soviet period, for Estonia, the 1992 independence meant the need to build up new structures (including financing schemes) and create relevant institutions for social protection management. Previously, the social security planning was partly shared with central institutions in Moscow. Additionally, the system of occupation-based social protection services were disappearing during the privatisation and had to be replaced with new systems. The political and economic changes were accompanied by the emergence of previously non-existent phenomenon such as unemployment, personal contributions to insurance schemes, and privatisation of the health care system. The current social protection system in Estonia still keeps many characteristics of state and employer responsibility having roots in the Soviet system (Ainsaar et al. 2019).

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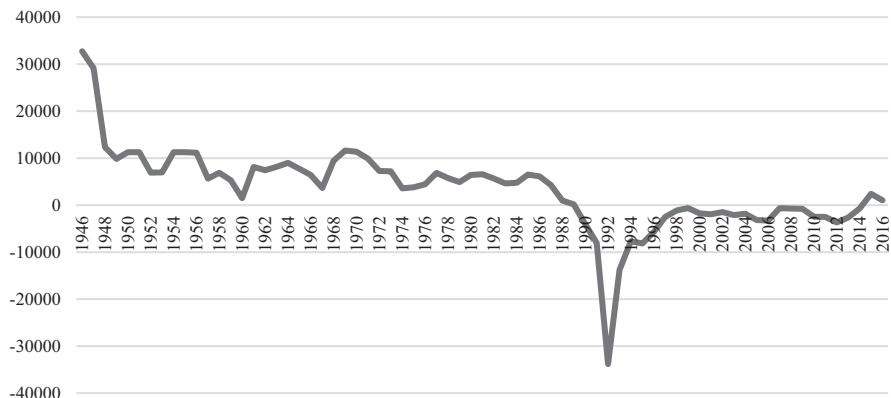
The current Estonian welfare regime is classified as a liberal type, often because of the low level of social protection per capita and the high level of privatisation of social protection institutions. However, the situation varies across different social protection domains. For example, the housing policy is practically missing, while the family policy is rather generous and universal (Ainsaar 2019). In addition, the government has an essential role in setting the general rules and monitoring the social protection system. The share of means-tested schemes is very low. The system generally follows solidarity principles and tax-based revenues are distributed among broader categories of recipients. Solely contributory schemes do not exist, except for unemployment insurance. The occupational and totally private insurance schemes are rare in Estonia. Old-age pensions represent the only social policy domain where private insurance plays an essential role in determining the output of social policy for the second and third pillar contributions. The Estonian social protection system is almost exclusively financed by social tax payed by employers (78% from all expenses) and by the central and local government structures (20%). Individuals cover directly only 1% of social protection expenditures. The Estonian system can therefore be seen as a state responsibility universal system by structure.

The core element of the financing of social expenditures is social tax. Employers pay it for employees and the government covers it for insured persons (children, elderly, unemployed, employees whose loss of capacity for work has been assessed as 40% or more, etc.). The social tax is 33% of the gross earnings, of which 20% forms pension insurance and 13% health insurance. Social tax contributions are used to (co)finance all social policy domains except the minimum income schemes. Also, the state budget contributions are essential in financing social protection (Ainsaar et al. 2019).

### ***9.1.2 Migration History and Key Policy Developments***

About 15% of individuals living in Estonia are born in other countries (Population Census 2011). This is one of the highest shares in Europe, although the percentage of non-national EU citizens is quite low (Batsaikhan et al. 2018). Most immigrants have arrived during the Soviet period from Russia, Ukraine, and Belorussia. Due to demographic crises, Estonia is a country with a substantial immigration need in order to replace the ageing population (Ainsaar and Stankuniene 2011; Ainsaar and Rootalu 2016), and immigration flows will probably increase in future. Still, for historical reasons, public attitudes towards immigrants are more cautious in Estonia than in many other European countries (Ainsaar 1997; Ainsaar and Beilmann 2016) and the country has had a rather conservative immigration policy during the past 25 years.

The age structure of the foreign-born population reflects the history of immigration to Estonia. 2% of foreign-born residents are in the age group 0–29 years, 6% in 30–49 years old group, and 30% in 50 and older age group. Estonia's migration history is closely linked with broader historical developments in the country. In



**Fig. 9.1** Net migration in Estonia (1946–2016) (Source: Ainsaar 1997; Statistics Estonia 2018)

1944, Estonia was annexed by the Soviet Union and after the second World War, the country experienced massive job immigration from the Russian Federation and other Soviet Union regions (Fig. 9.1), mainly to towns (Ainsaar 1997).

Immigration was replaced by net out-migration trends after the re-independence at the beginning of the 1990s. A large share of Soviet Union military personnel, their families and related population groups formed the main emigrant group at the beginning of 1990s. The group of emigrants also included members of the Russian-speaking population, who felt insecurity towards their future or were reluctance about the official language and citizenship requirements (Tammur 2017). The Russian-speaking group (Russians, Belarusians and Ukrainians) still remain the dominant ethnic group in Estonia (Ainsaar and Stankuniene 2011).

Estonia's accession to the EU in 2004 changed migration flows as emigration started to decline and immigration to rise, although the net migration remained negative. Geographically close Finland became the main destination country for economic emigrants. The majority of new immigrants still arrived from Russia and Ukraine (Tammur 2017). Since 2015, immigration from other EU member states also started to grow, partially due to return migration (Statistics Estonia 2019).

Since 2015, a new methodology for counting international migration was applied in Estonia, using cumulative data from many administrative registers to calculate the so-called residency index for all individuals (Tiit and Maasing 2016). If the records in registers are missing for several continuous years, the person is classified as emigrant and once the registers reveal the activity of a person in the country, he/she can be counted as an immigrant. Due to this new methodology, both immigration and emigration numbers rose and the net migration rate became positive.

The entitlement to social security rights is based mostly on legal residency record in Estonia. All newly arrived persons must register their place of residence and the registration procedures depend on their nationality. EU citizens who stay more than three months in Estonia must register at the population register within first three months of arrival. Non-EU foreigners must have a valid visa, or a temporary or

long-term residence permit prior to their registration. Estonian immigration policy applies a quota system for third-country nationals, although the regulations have become more liberal in recent decades due to labour force shortages. For example, there is no quota for specialists earning more than two times the average salary or for nationals from countries with a special agreement with Estonia. Moreover, the immigration quota does not include foreign employees in the information technology sector or start-up companies.

Although there are signs of growing inflows, the number of new immigrants is rather small and Estonia balances around the zero net migration. Although immigration is an essential topic in the public debate, Estonia has less experience with newly arrived immigrants than other EU countries.

## 9.2 Migration and Social Protection in Estonia

Despite the relatively long history as a sending country, the topic of immigration and emigration is poorly covered in the domestic social protection legislation in Estonia. This applies for the legislation covering most social benefits except for pensions. Concerning mobility, the Estonian social protection system follows the EU requirements, but many mobility-related social rights are not covered explicitly in the national law and in certain cases, the details regarding mobility-related situations are completely missing.

The main principles of social protection in Estonia are based almost exclusively on the legal residency requirement. If a person is registered as a legal resident in the population register, she/he has equal entitlement for social rights with long-term legal residents. The social protection entitlement usually does not require waiting periods. Once a foreigner becomes resident, equal treatment with national residents is guaranteed. Hence, citizenship does not determine access to social rights. EU foreigners and citizens of countries with bilateral agreements with Estonia might have additional protection in some situations.

### 9.2.1 *Unemployment*

The Estonian unemployment policy includes unemployment insurance benefits, the unemployment allowance, and labor market services (e.g. career counselling, employment trainings and stipends, employment subsidies). The Law of Unemployment Insurance<sup>1</sup> sets the compulsory unemployment insurance tax shared by employers and employees. In 2015–2018, the tax rate was 1.6% of income for

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<sup>1</sup>Riigi Teataja (2001). Töötuskindlustuse seadus. Riigi Teataja. <https://www.riigiteataja.ee/akt/104052018006>. Accessed 7 February 2018.

employees and 0.8% for employers.<sup>2</sup> The unemployment allowance is a flat-rate, means-tested benefit financed from the state budget. The Estonian Unemployment Insurance Fund is the main institution in charge of implementing unemployment policies.

All legal residents have equal access to unemployment benefits and allowance, as long as they fulfil the requirements. To qualify for unemployment allowance, individuals must have worked 180 days during the last 12 months; and 12 months during the last 36 months for the unemployment insurance benefit. The unemployment allowance is means-tested and the applicants' income must be lower than 164 euros a month.<sup>3</sup> There is also a waiting period of one month since the application was submitted for unemployment allowance. The maximum period to receive the unemployment allowance is 270 days. The waiting period for the unemployment insurance benefit is 8 days since submission of the claim. The duration of this benefit depends on the period of prior contribution: for individuals who have worked one to five years, the benefit is granted for 180 days; for those who worked 5 to 10 years, the duration of the benefit is 270 days; and it is further increased to 360 days for those who contributed for 10 years or more.

Receiving unemployment benefits does not hinder foreigners' access to residence permits. However, having a job is an important factor in the decisions regarding residence permits. The allowance and insurance benefit can be received by nationals residing in other EU countries, but not in non-EU countries. Unemployment benefits recipients can travel to other EU countries to look for a job up to 3 months and continue receiving the benefits if this is agreed with the Unemployment Insurance Fund. Estonia also has two bilateral agreements (with Ukraine and Australia) covering unemployment issues. For example, the agreement with Ukraine allows to add up working periods in both countries to qualify for an unemployment allowance.

### **9.2.2 *Health Care***

The main scheme to cover health insurance is a compulsory earnings-related health insurance scheme for the economically active population, paid by employees and self-employed. For many groups, the insurance is covered by the government (resident children up to 19 years of age, students up to 24 years of age, parents of children in certain conditions, recipients of social benefits or insurance schemes, pregnant women, etc.).

Compulsory contributory health insurance covers the costs of medical examinations, medical treatment and prescription pharmaceuticals at discounted prices. It

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<sup>2</sup>Riigi Teataja (2014). Töötuskindlustusmakse määrad aastatel 2015–2018. Riigi Teataja <https://www.riigiteataja.ee/akt/128092014002&searchCurrent>. Accessed 10 May 2018.

<sup>3</sup>Töötukassa (2018). Töötutoetus. <https://www.tootukassa.ee/content/toetused-ja-huvitised/tootutoetus>. Accessed 11 May 2018.

also covers the costs of the allowance for temporary incapacity for work. Because of its small size and centralised management of health care, Estonia has only one (central) Sickness Fund. Voluntary health insurance is used mainly for travel related additional health insurance cases. If the person is not already insured, he/she can enter into a voluntary insurance contract with the national Health Insurance Fund or any private insurance company. According to OECD estimates, 9.9% of the health expenditures in Estonia is financed by government schemes, 65.6% by the compulsory social health insurance, 1.6% by the voluntary health insurance schemes and 22.7% by out-of-pocket payment (Ainsaar et al. *forthcoming*). The health care costs for those who are not insured (5% of the population) are financed as out-of-pocket payments.

The Estonian system defines disability as a long term mental or body dysfunctionality that causes coping restrictions. Disabled people benefits are financed from several sources and are available only for those who are permanent residents in Estonia. The benefits' level and arrangements are dependent on the type and degree of disability.

All legal residents have the same entitlement rules for health treatment and health insurance, regardless of their nationality. If a person is working in several EU countries, he/she is entitled to the health insurance coverage if he/she contributes to the health insurance fund. The insurance coverage starts after 14 days waiting period and is valid for two months after the termination of the employment contract. Persons insured in Estonia can receive health treatment in other EU countries. When travelling in Europe, holders of the Sickness Fund insurance are entitled to medical care on an equal level with the nationals of their countries of residence (EU countries, Liechtenstein, Norway, Iceland, and Switzerland). For expensive operations and treatment in non-EU countries, a prior agreement from the Sickness Fund is required. If an insured person falls ill abroad, the Health Insurance Fund will pay the sickness benefit.

All persons having compulsory contributory health insurance are entitled for almost free treatment in hospitals (with very low of pocket payment - 2 euros per day) and access to medical doctors (with symbolic 1–3 euros out of pocket payment for a visit). When the person falls ill, he/she can obtain a sick leave certificate and the sickness benefit will be paid by the employer and the Health Insurance Fund. For days 4–8 of sickness, the employer pays the benefit at 70% of 6 months' average salary of the employee. From day 9, sickness benefit is paid by the Health Insurance Fund based on employee's daily income. A person is entitled to the sickness benefit for up to 182 consecutive calendar days. A physician can also issue a certificate for sick leave for a longer period, but no sickness benefit will be paid during this period.

EU and non EU residents can access health benefits in kind and cash under the same conditions as national residents. Moreover, nationals residing abroad have access to health care under the same eligibility conditions as nationals living in Estonia.

### 9.2.3 Pensions

Pensioners in Estonia have higher poverty rate and their economic situation is worse compared with the EU average (Estonia 2018). The old-age pension system stands on three pillars. The national pension (*rahvapension*) and old-age pension (*vana-duspension*) comprise the first pillar. National pension is financed from the state budget, whereas the old-age pension and the second pillar are financed by individuals and employers from an earmarked social tax and by state budget. The second pillar is mandatory for younger people (born in 1983 or later) with some state supervision and the third pillar is a voluntary pension scheme without state supervision.

Entitlement for old-age pension requires at least 15 years of employment in Estonia. Periods worked in other EU countries can be taken into account. Those who do not meet the 15 years requirement can claim a national pension (tax-financed universal scheme guaranteeing a minimum pension for residents). The pensionable age is 63, to be gradually increased to 65 by 2026. When a person retires earlier, the pension is reduced by 0.4% per each month retired earlier. The national pension is granted to individuals in retirement age who do not meet the qualifying period requirement for an old-age pension and have resided in Estonia for at least five years immediately before the submission of the claim. National pension is not paid to persons who receive pension from another state.

There is no qualifying period for 2nd and 3rd pillar pensions schemes, but payments depend on the amount of collected money. Since 2018, there is no special geographical restrictions for the use of 2nd and 3rd pillar pensions around the world. Non-residents who have contributed to pension schemes in Estonia (old age, second and third pillar) have the right to an old-age pension and second and third pillar payments. To receive their pension abroad, non-residents must contact the Pension Center and submit yearly life certificates or certificates of residence in the other country.

EU rules regulate how mobile EU citizens collect their pension rights from other EU countries,<sup>4</sup> by guaranteeing that the entitlement period and level on pension earned in different EU countries are taken into account. Transferable pension rights and eligibility criteria are the main topics of the bilateral agreements that Estonia has signed with non-EU countries (Table 9.1). The most common issue regulated in these agreements is the treatment of years at work (from the Soviet Union period in the agreements with Latvia, Lithuania, Russia, Ukraine) for eligibility of pension insurance. Bilateral contracts with EU countries Latvia and Lithuania regulate the period during the Soviet Union period. However, the contribution to the pension schemes made in non-EU countries not covered by a bilateral agreement with Estonia will not be taken into account for entitlement to pensions. If the person moves to non-EU countries, he/she might lose the right for the first pillar old-age pension earned in Estonia.

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<sup>4</sup> State pensions abroad (2018). [https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index\\_en.htm](https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index_en.htm). Accessed 23 February 2019.

**Table 9.1** Active bilateral social security agreements signed by Estonia

Agreements	Regulation areas	Main issues stipulated in the agreement
Russia (1996)	Pensions, health care	Some guarantees to military pensioners and their family members in the both countries.
Canada (2006)	Pensions	Continuation of payment for citizens of a country who move to the other country. Aggregation of periods of employment for entitlement to the minimum pension.
Lithuania (2007)	Pensions for citizens (employees, employers, and their family members)	Aggregation of years worked in the other country before 1991 in accounting minimum working years for pension entitlement. Before 1991, the years will be counted in the country where the person has worked or stayed longer.
Latvia (2007)	Pensions for citizens	Aggregation of years worked in the other country before 1991 in accounting minimum working years for pension entitlement. Before 1991, the years will be counted in the country where the person has worked or stayed longer.
Moldova (2011)	Pensions for residents	Regulates how social tax and work contribution is taken into account in calculating pension in the other country.
Ukraine (2011)	Pensions, family benefits, work accident benefits, death grant, unemployment insurance.	Regulates the right of citizens of a country residing in the other country
Russia (2011)	Pensions	Totalization of years of employment between the two countries.
Australia (2018)	Pensions	The years of work in the other country are taken into account when counting the pension insurance years.

Source: Maksu ja Tolliamet (2018)

#### 9.2.4 Family Benefits

The Estonian family policy system can be divided into three subsystems: family benefits, leaves and leave benefits (maternity, paternity, parental), and day care.<sup>5</sup> In 2018, family benefits include birth grant, life entrance grant for children who graduate from institutions and start to live independently, child allowance, single parent allowance, allowance for families with three or more children, child allowance for a family of temporary military servant, and child allowance for a child in custody care. As in case of other social protection schemes, all legal residents of Estonia are entitled to family benefits and childcare services, regardless of their migration background in case of birth of a child or if they have children in the household. There is

<sup>5</sup>The described system of family leave benefits is currently under review. The main idea is to make the current leaves system what is financed partially from health care and partially from social taxes more flexible for parents and change the source of maternity leave benefit.

no special waiting period for the family benefits package. Family benefits are financed from the general state budget and are not means-tested. Childcare leave benefits (with some exceptions) are income-related with lower and upper ceiling. The birth grant is a lump sum paid to one resident parent. For child allowance, single parent allowance, allowance for families with three or more children, child allowance for a family of temporary military servant, child allowance for a child in custody care, the child must live in Estonia and cannot receive similar benefits from elsewhere.

The maternity benefit is paid by the Health Insurance Fund to female employees who are insured. The benefit is paid for 140 calendar days, at a rate of 100% of the average income per calendar day (with upper and lower ceiling). Women who did not work in Estonia before the maternity leave period are not eligible for a maternity leave and benefit.

Working fathers can use the paternity leave of 30 working days in two months before the predicted date of birth or two months after the birth (the leave can also be used in parts). As for the parental leave, this is generally used after pregnancy and maternity leave. The eligibility criteria is legal residency in Estonia. A mother or father has the right for parental leave until their child reaches the age of 3. Parent can change upon agreement who will use the child care leave, but the parental leave benefit is generally paid to the parent taking care of the child. Parental leave benefit is paid for 18 months and the state pays additionally for this period contributions to the parent's mandatory funded pension and health insurance. The amount of parental leave benefit depend on social tax contribution in Estonia if the parent worked previously. If parent worked 100% in another EU country, the benefit will be calculated according the average salary. If a parent worked partially in another EU country or did not receive income in Estonia, the parental benefit calculations are based on the minimum wage in Estonia. After the parental benefit period comes to an end, one parent is entitled for childcare allowance, which does not depend on previous earnings. All legal resident parents are entitled to claim the childcare allowance.

Family benefits are not transferable to other countries once the person leaves Estonia. In case of child benefits (but not for leave benefits), the entitlement depends on parent(s) residence and work status. For example, if one parent does not work, but the other works in another EU country, the child get the child benefit from one country and if in the other country, the level is higher, the missing part being covered by the other EU country.

### ***9.2.5 Guaranteed Minimum Resources***

Minimum incomes in Estonia are guaranteed under the subsistence benefit scheme. The benefit is paid to individuals/households residing in Estonia, whose income after payment of fixed housing expenses are below the subsistence level. In 2020, the subsistence level for people living alone or for the first member of the family was 150 euros per month, 180 euros for every child and 120 euros for each

following family member.<sup>6</sup> The subsistence benefit is granted for one month at time, but there is no maximum time period limitations for receiving the benefit. A new means test is carried out each month. Municipalities are responsible for the management of the subsistence benefits, but the overall regulation<sup>7</sup> is approved in the national Parliament.

To claim subsistence benefits, individuals must submit an application to the local authorities with documents certifying the net income of the household. In case of doubt regarding the correctness of documents proving income and information concerning residence, the documents shall be submitted to the regional structural unit of the Tax and Customs Board or the authorised processor of the population register for inspection. To enforce the right to decline the application for subsistence benefit on the basis of property evaluation, local government officials have the right to ask the person concerned or other parties for supplementary information.

The conditions of access to this benefit are the same between national residents, EU foreigners and non-EU foreigners if they reside legally in Estonia. The only eligibility condition is either short- or long-term legal residency in Estonia and income level. Due to the residency-based nature of this benefit, nationals residing abroad are not considered as eligible claimants. There is no explicit requirement that individuals have to search for a job while receiving the subsistence benefit. All legal residents get immediate access to this benefit after registering their residency in Estonia, although the lack of decent income level can serve as a ground for denying the application for legal residence.

### 9.3 Conclusions

The current social policy in Estonia is a product of combination of prevailing right-wing governments, Soviet and Nordic welfare traditions, and EU normative guidelines (Ainsaar et al. 2019). Social security rights are based mostly on recorded residency in Estonia with some additional entitlement rights for immigrants from other EU countries or countries covered by bilateral agreements.

Immigration and emigration issues are still poorly regulated in the Estonian social protection laws. For the last 25 years, Estonia has been mainly an emigration country and this might explain the low salience of immigration-related social security regulations in Estonia. Mass immigration has not been a problem and the social protection acts hardly cover mobility-related issues in an explicit manner. Policy discussions related to the social protection of non-national residents and non-resident nationals have been missing from the public debate during the last 15 years.

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<sup>6</sup>Sotsiaalministeerium. (2020). Toimetulekutoetus. <https://www.sm.ee/et/toimetulekutoetus-0>. Accessed 23 February 2019.

<sup>7</sup>Riigi Teataja (2015). Social Welfare Act. <https://www.riigiteataja.ee/en/eli/528062018001/consolidate>. Accessed 23 February 2019.

Immigrants' access to social benefits in Estonia also depends on the general structure of the national social protection system. The government and municipalities are mostly responsible for providing social security and only certain domains of social policy (like health care, old-age pensions and unemployment insurance) are related to the contributory insurance in Estonia. Missing waiting periods for entitlement to social benefits guarantee for newly arrived immigrants have similar rights with long-term residents in terms of access to social protection.

The main channel for acquiring social protection rights in Estonia is the legal residency. Although heavily financed by taxes and state contributions, the system is quite generous towards foreign residents, especially the eligibility conditions or general procedures for accessing benefits do not vary between national and foreign residents. Estonia does not have specific scheme of social benefits only for foreigners or only for Estonian citizens residing abroad. In most cases, there is no differential treatment between EU and non-EU citizens, only pensioners and health care patients from EU can export some right for entitlement benefits from their countries of origin. The EU rules cover illness and maternity benefits, disability, old age and survivor's pension, occupational accident and occupational disease benefits, funeral allowance, and benefits paid to the unemployed and family benefits. Persons leaving Estonia mostly lose entitlement for social protection, except for the pension scheme and health care in EU. Due to bilateral agreements and EU regulations, a gradual shift is observable in Estonia to take more into account international mobility in recent years.

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# Chapter 10

## Migrants' Access to Social Protection in Finland



Laura Kalliomaa-Puha

### 10.1 Overview of the National Social Security System in Finland

#### 10.1.1 *Main Characteristics of the Finnish Social Protection System*

The Finnish social protection system is universal, hence not restricted to specific groups or insured individuals only. It is divided into residence-based and employment-based social protection (Fig. 10.1). Eligibility is mostly built on residence whether it is question of income security, healthcare or social services. Most benefits are financed by tax revenue. Employers and employees participate in the funding of employment-based earnings-related benefits by paying social insurance contributions. However, the contributions are often mandatory and contributions therefore resemble taxes.<sup>1</sup>

All individuals residing in Finland are covered by social security schemes which govern basic pensions (national pensions), sickness and maternity benefits, family benefits, and social assistance. The Social Insurance Institution (*Kansaneläkelaitos, Kela, Folkspension anstaltet, FPA*) is in charge of these benefits. All employed persons are entitled to statutory earnings-related pensions and benefits for unemployment, work accidents and occupational diseases. One particular feature of the

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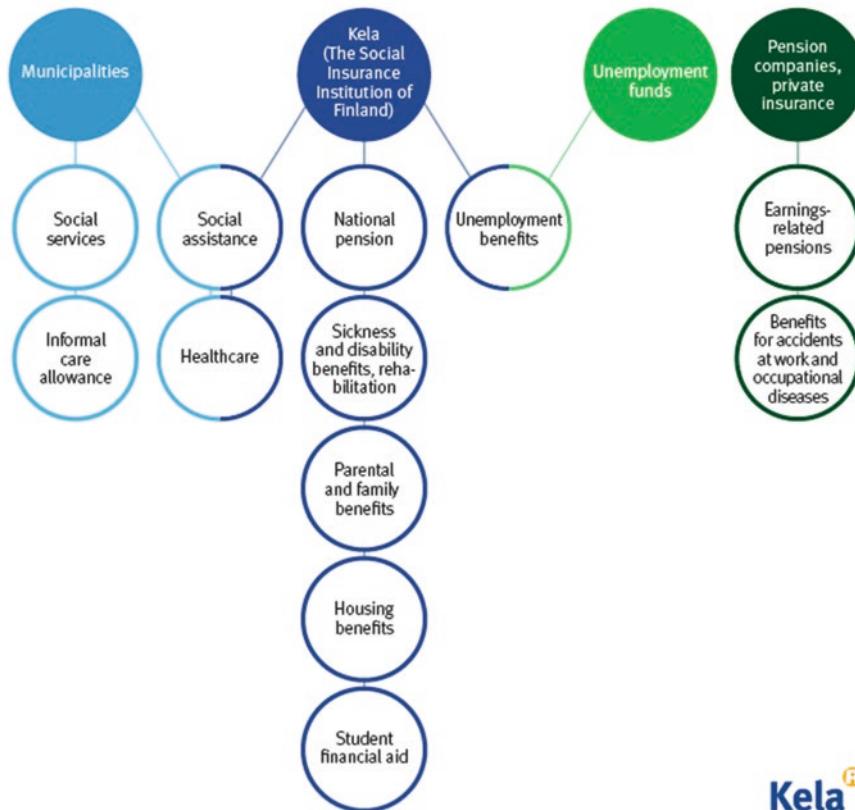
<sup>1</sup>For more information regarding the Finnish social protection system, see the website of the Ministry of Social Affairs and Health (<https://stm.fi/en/frontpage>) and Kela (<https://www.kela.fi/web/en>). Accessed 18 February 2019.

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## Social security in Finland

●● Based on residence    ●● Based on employment



**Fig. 10.1** Social protection in Finland. (Source: KELA, <https://www.kela.fi/web/en/social-security-in-finland>, accessed 28 February 2019)

Finnish social protection system is that also private insurance companies and unemployment funds take care of these contributory benefits.

The duty to arrange health care and social services lies on municipalities of residence.<sup>2</sup> Although there are numerous private social service providers (such as private foster homes or elderly care), their services are mostly bought by the municipalities. Contrary to that, the current Finnish health care system is a hybrid one consisting of insurance-based national health insurance, municipality-based

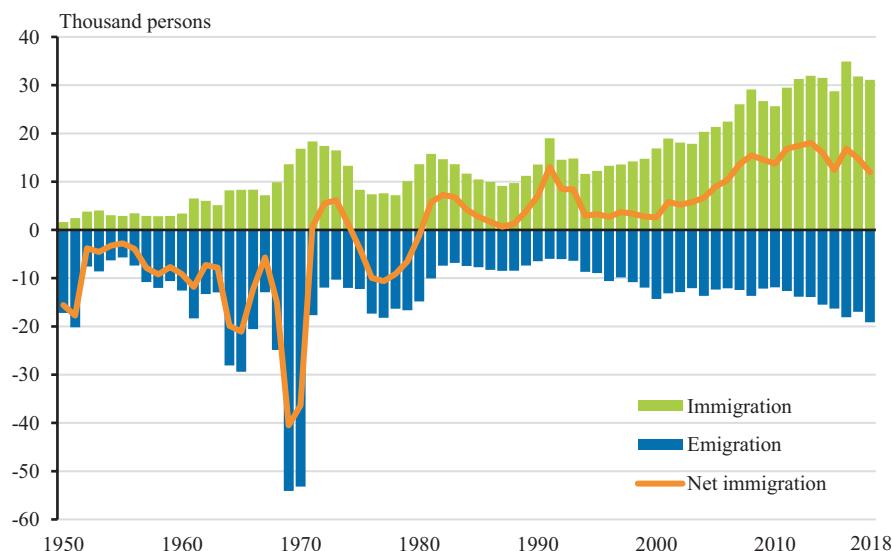
<sup>2</sup> Social Welfare Act (*Sosiaalihuoltolaki, socialvårdslagen*, 1301/2014, s. 12.1, and Health Care Act (*terveydenhuoltolaki, hälsos- och sjukvårdslag*, 1326/2010, s. 24). All laws can be found at Finlex-database: [www.finlex.fi](http://www.finlex.fi). Accessed 18 February 2019.

health service model and employment-related occupational health care. The national health insurance (run by Kela) provides reimbursements for the costs of prescribed medicine and medical treatment obtained from private providers if one chooses to use private providers instead of the public provision. All residents are covered. Universal health care in each municipality was established in 1972. The third path is occupational health care, which was institutionalized in 1978. The co-existence of these three models has resulted in a multichannel system in financing, access to health care and, consequently, different levels of availability and access to care.

### 10.1.2 *Migration History and Key Policy Developments*

For a long time, Finland has been a country of emigration and only in the 1980s the number of immigrants started to exceed the number of people leaving Finland (Fig. 10.2). From the seventeenth century to World War II, the majority of Finnish emigrants settled in the United States, Canada and Australia, and in Finland's neighbouring countries such as Russia, Sweden and Norway. Starting from the 1950s and peaking in the 1970s, Finns moved to work in Sweden looking for higher salaries, better living standards and more available housing. By the 1980s, Finland approached Swedish levels and many Finns began to return (Tanner 2011).

Out of the current population of around 5.5 million people, approximately 5% claim a foreign background (having been foreign born, speaking a foreign language or having a foreign citizenship). In 2017, there were 385,000 people with foreign



**Fig. 10.2** Emigration and immigration in Finland, 1950–2018. (Source: Statistics Finland, [https://www.tilastokeskus.fi/tup/suoluk/suoluk\\_vaesto.html#muuttoliike](https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html#muuttoliike), accessed 18 February 2019)

background, out of which 16% were born in Finland (Statistics Finland 2019). Most foreign residents came from Estonia, Russia, Sweden, Iraq and China (Table 10.1). Most of them arrived for family reasons (54% of immigrants aged 16–64 years living in Finland in 2014), 18% arrived for work reasons, 10% for studies and 11% for asylum and international protection (Tanner 2011; Sutela and Larja 2015). Estonians mostly immigrated for work, whereas asylum-seeking was the main reason of immigration for people from Middle East and Northern Africa. In 2014, most asylum seekers came from Iraq, Somalia, Afghanistan and Iran (Sutela and Larja 2015). In 2014, only 3651 refugees came to Finland, while in 2015, 32,476 persons sought for asylum. In 2019, the number for asylum seekers was 4550 (Finnish Immigration Service, <https://tilastot.migri.fi/#decisions/23330?l=en>).

Given that the inflows to Finland have been relatively recent, the first Alien Act came only in 1983 (400/1983, followed by Act 378/1991). It did not include any actual right to reside, thus leaving the authorities with a vast room for discretion. Only amendments in the 1999 Act provided for more precise criterion regarding the evaluation of the right to reside including, for instance, that the decision cannot be unreasonable. Due to several changes, the Act was considered incoherent and therefore reformed comprehensively in 2004 by Alien Act 301/2004 (still in force).

Finnish immigration policy is twofold: on the other hand, it aims to persuade migrants to come to Finland for work (*työperusteinen maahanmuutto*) while, on the other hand, it tries to cut down the benefits of asylum seekers so only those in real need would come to Finland (Aer 2016). The significant increase in the numbers of asylum seekers in 2015 further sharpened this rationale – for example, the possibilities to get legal aid or apply for family reunification have become more restrictive, the time to appeal has been shortened and the category of humanitarian protection has been abolished from the legislation. However, migration is seen as one solution for meeting challenges of ageing population and labour market instability. It has

**Table 10.1** Foreigners in Finland (2016–2017)

Country of citizenship	2016	%	2017	%	Annual change, %
Estonia	51,499	21,1	51,539	20,7	0,1
Russia	30,970	12,7	29,183	11,7	-5,8
Iraq	9813	4,0	11,729	4,7	19,5
China	8480	3,5	8742	3,5	3,1
Sweden	8040	3,3	8018	3,2	-0,3
Thailand	7487	3,1	7533	3,0	0,6
Somalia	7018	2,9	6677	2,7	-4,9
Afghanistan	5294	2,2	5792	2,3	9,4
Vietnam	5253	2,2	5603	2,2	6,7
Syrian Arab Republic	3355	1,4	5290	2,1	57,7
Others	106,430	43,7	109,346	43,8	2,7
<b>Total</b>	<b>243,639</b>	<b>100</b>	<b>249,452</b>	<b>100</b>	<b>2,4</b>

Source: Statistics Finland, Population structure. [https://www.tilastokeskus.fi/tup/suoluk/suoluk\\_vaesto.html#muuttolike](https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html#muuttolike), accessed 18 February 2019

been recognized that migrants' social needs must be met, although the general perception of migrants as excessive consumers of social benefits make extending social security to new groups of people a rather difficult task both economically and politically (Kiuru 2014; Aer 2016). Yet, there is little evidence regarding the misuse of the Finnish social security system and actually, the take-up of benefits by immigrants is relatively low due to lack of awareness regarding the benefits they are entitled to (Kiuru 2014; Castañeda et al. 2012).

For long the topic of immigration to Finland was not an issue of concern at the political level, despite some discussions regarding refugee quotas and migrants' integration during the 1990s. During the 2000s, the public debate has mostly evolved around legal protection, economy and national security, and the possible misuse of the asylum system (Palander 2018a; Välimäki 2017; Aer 2016). The category of undocumented migrants, or "paperless" people (*paperottomat*) as referred to in public, includes third-country nationals residing in Finland without a residence permit or people residing in Finland legally but which are not entitled to social security, social welfare or health services, for several reasons (Keskimäki et al. 2014; Nykänen 2018). Discussions regarding the needs and social rights of this group have only recently emerged, due to their relatively small numbers within the overall foreign population. Following the Swedish example, there was a legislative proposal for extending the rights of undocumented immigrants to cover also maternity services and treatment of chronic diseases in addition to already provided emergency care. Although the proposal was not finally approved, some municipalities have started to offer certain services in addition to voluntary work based clinics (*Global clinics*) in some large cities (Nykänen et al. 2017; Nykänen 2018).

## 10.2 Migration and Social Protection in Finland

Generally speaking, the Finnish social security system treats nationals and foreigners equally. Nationality is not a criterion for accessing benefits or services. As soon as a person becomes a permanent resident and is covered by the Finnish social security system, the eligibility rules for accessing social benefits are the same for citizens and non-citizens. However, the rules for entering the country and the conditions for becoming a permanent resident are different between nationals, EU citizens, and third-country nationals. Nationals do not need residence permits and they can enter Finland at any point (Aer 2016).<sup>3</sup> Residence permits are issued by the Finnish Immigration Service (*Maahanmuuttovirasto, Migrationsverket*).<sup>4</sup> EU/EEA/

<sup>3</sup>The rules for entering Finland are stipulated in the Aliens Act (*ulkomaalaislaki, utlänningslag*, 301/2004) s. 10. Legislation of Finland can be found at online database in Finnish and Swedish. Some translations of Finnish acts and decrees are also available in English and other languages. See [www.finlex.fi/en/](http://www.finlex.fi/en/). Accessed 18 February 2019.

<sup>4</sup><https://migri.fi/en/home>. Accessed 18 February 2019.

Swiss nationals do not need a residence permit, although they must register with the Finnish Immigration Service if their stay is longer than 3 months.

The criterion for permanent residence is laid out in the Act on Residence-based Social Security in Cross-border Situations (*Laki asumisperusteisesta sosiaaliturvasta rajat ylittävässä tilanteissa*, *Lag om bosättningsbaserad social trygghet I gränsöverskridande fall*, Act 16/2019), and the Municipality of Residence Act (*Kotikuntalaki*, *Lag on hemkommun*, 201/1994). A person is considered to live in Finland on a permanent basis if she/he has the permanent residence and home in Finland and stays mostly in Finland. As a main rule, residence abroad for less than six months is considered temporary (except for specific categories such as posted workers, state officials, students and their family members). The Municipality of Residence Act stipulates that, in order to obtain a domicile in Finland, EU/EEA/ Swiss nationals need to register (if their stay is longer than 3 months), while third-country nationals need a permanent or extended residence permit.<sup>5</sup> Those with shorter residence permits (at least for a year) can still have a domicile in Finland if they plan to stay in the country permanently. According to the Municipality of Residence Act, Finnish origin, having lived in Finland previously, having had a work contract for at least two years, having studied for at least two years or having lived in Finland uninterruptedly for a year count towards permanency.<sup>6</sup>

If one moves to Finland on a permanent basis, he/she is usually covered by the Finnish social security system from the first day. However, residence-based social security systems may require a certain period of residence to qualify for certain benefits such as parental allowances, invalidity benefits and the national pension. If one comes to Finland from another EU country, time spent there counts for this qualifying period. On the other hand, non-residents who work abroad in the service of an employer from Finland also qualify for benefits from Finland, including the national pension, child support, invalidity benefits, unemployment benefits and health insurance benefits. Incoming workers qualify for Kela benefits if they earn at least 696.60 € per month (Act 16/2019). One may be entitled to benefits even with lower earnings or as jobseeker if he/she has worked for at least 6 months. Jobseekers who arrive from third countries with which Finland has not concluded a social security agreement cannot normally gain social security coverage in Finland.

Finland has concluded social security agreements with the main non-EU countries of destination of Finnish emigrants (United States, Canada and Australia), but also the Nordic countries, Chile, Israel, India, China and South Korea.<sup>7</sup> These agreements stipulate that a pension accrued in Finland is always paid in the other country. The agreement with the United States also covers health insurance, parental allowances and child benefits for employees on a temporary assignment in the other

<sup>5</sup>There are various kinds of residence permits: see Nykänen 2018; Kallio 2018; Sorainen 2017; Aer 2016; Kiuru 2014 or the website of the Migration Office.

<sup>6</sup>One may keep domicile for a year when moving abroad. Therefore, it is possible to be entitled to benefits in kind longer than cash benefits. Naturally, they cannot be exported, so to get them, one has to travel to Finland.

<sup>7</sup>Social security agreements can be found at <https://www.finlex.fi>. Accessed 18 February 2019.

country. The agreement with Chile covers medical treatment for pensioners, whereas the one with Israel covers child benefits and maternity grants and, for posted workers, also health insurance and parental benefits. The agreement with Australia stipulates that temporary residents of Australia who are insured by the Finnish National Health Insurance are entitled to emergency medical treatment. As for the social security cooperation between the Nordic Countries, the first Nordic Convention on Social Security was concluded in 1955. Nowadays, persons who move between the Nordic countries are covered by the provisions of the EC Regulation on social security. However, the Nordic Convention might offer better treatment in certain cases (for instance, the Convention also applies to persons who would otherwise not be covered by the EC Regulation such as non-EU citizens moving between Denmark and other Nordic countries).

### 10.2.1 Unemployment

Finland has two unemployment schemes: a) the income-related benefits paid out by unemployment funds (*työttömyyskassa, arbetslössetskassa*) and financed through premiums paid by insured employees and mandatory fees collected from employers and employees in addition to taxes and; b) "basic benefits" paid out by Kela and covered by taxes and fees paid by employees.<sup>8</sup> Employees and self-employed can voluntarily insure themselves with one of the unemployment funds for the income-related allowance. For individuals who have not joined any unemployment fund, two "basic security" benefits are available: the basic unemployment allowance and the labour market subsidy. Kela provides a flat-rate basic unemployment allowance (*peruspäiväraha, grunddagpenning*) payable for 400 days to unemployed with at least 26 weeks of employment (work done in other EU countries also counts for this). To be eligible for this benefit, one has to register as jobseeker with the Employment and Economic Development Office. The basic unemployment allowance is not means-tested and meant mostly to resident unemployed (it can be exported when the unemployed is looking for a job in other EU countries).

Those not complying with work requirements or those who have already exhausted their unemployment benefits can apply for the non-contributory labour market subsidy (*työmarkkinatuki, arbetsmarknadstöd*). This means-tested subsidy is granted only to residents (either nationals or foreigners) for an unlimited duration. The subsidy cannot be exported but if one resides temporarily abroad, is actively looking for a job in Finland, and ready to accept work in Finland or take part in activation measures, he/she can keep receiving labour market subsidy.

Unemployment benefits may also be temporarily cut or lost when claimants refuse job offers or activation measures. Foreigners may have extra duties in an

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<sup>8</sup>Act on unemployment benefits, *Työttömyysturvalaki, Lag on utkomstskydd för arbetslösa* 1290/2002.

individual *integration plan*, and failing to do so might lead to reductions (Act on the Promotion of Immigrant Integration 1386/2010).

Most social security agreements (except for China and South Korea) concluded by Finland do not cover unemployment benefits. However, the Nordic Convention includes, for instance, a five-year rule on the right of returning migrants from another Nordic country to unemployment benefits. According to this rule, the employment history in another Nordic country of a person who returns to Finland can be taken into account directly as counting towards the condition concerning previous employment for the Finnish unemployment allowance. However, one precondition is that the person has worked in Finland or received unemployment allowance from Finland in the previous five years.

### **10.2.2 Health Care**

Every resident is entitled to adequate healthcare according to the Constitution of Finland.<sup>9</sup> Persons who have a municipality of residence in Finland are entitled to treatment in the public healthcare system. Citizenship or country of origin are not relevant for accessing benefits in kind in case of sickness: once a person is permanent resident, he/she is entitled to public health care and covered by the National Health Insurance (*sairausvakuutus, sjukförsäkring*). However, the type of residence permit, the length of the residency and the reason for residency effect the scope of the services.

Municipalities are responsible for arranging and funding health care in kind for their permanent residents.<sup>10</sup> They have the right to levy taxes, but also state subsidies and user fees are important for funding. There is an upper limit per calendar year for the fees for health care and medicine, beyond which patients do not have to continue paying. Minors are exempt from fees. Most employees, however, have access to occupational health care, exempt from fees. There are also special arrangements for university students.

Those who stay in Finland temporarily are only entitled to emergency treatment. Those insured in another EU country receive necessary medical treatment and pay

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<sup>9</sup> *Perustuslaki, Grundlagen*, 731/1999. Unofficial translation available at: <https://www.finlex.fi/en/laki/kaannokset/haku/?search%5Btype%5D=pika&search%5Bkieli%5D%5B%5D=en&search%5Bpika%5D=constitution&submit=Search> Accessed 18 February 2019.

<sup>10</sup> The Health Care Act (*terveydenhuololaki, hälso och sjukvårdsleg*, 1326/2010, unofficial translation available at: <https://www.finlex.fi/en/laki/kaannokset/2010/20101326>, accessed 18 February 2019); Primary Health Care Act (*kansanterveyslaki, folkhälsolag*, 66/1972, unofficial translation available at <https://www.finlex.fi/en/laki/kaannokset/1972/19720066> accessed 18 February 2019); Act on Specialized Medical Care (*erikoissairaankoitolaki, lagen om specialiserad sjukvård*, 1062/1989; unofficial translation available at <https://www.finlex.fi/en/laki/kaannokset/1989/19891062>, accessed 18 February 2019); Mental Health Act (*mielenterveyslaki, mentalvårdslagen*, 1116/1990, unofficial translation available at <https://www.finlex.fi/en/laki/kaannokset/1990/19901116>, accessed 18 February 2019).

the same fees as residents. Others can be charged for the costs of the treatment afterwards also for emergency treatment. In other words, everyone (including undocumented migrants) is entitled to emergency health care and EU nationals to a bit more even though they stay in Finland only temporarily as tourists. Asylum seekers are entitled to emergency healthcare, including maternity care and treatment of chronic diseases. Minors are entitled to all same services as permanent residents.

People coming to work in Finland from another EU country or their family members are entitled to public healthcare services even though they have no domicile in Finland. Third-country nationals have the same rights providing they have a residence permit that allows them to work (Kotkas 2019). Employees who are only covered by earnings-related pension insurance or workers' compensation are not covered by the National Health Insurance and cannot get reimbursed for costs for private healthcare, medicine or travel costs.

Under the Nordic Convention on Social Security, extra costs for the return journey home from another Nordic country in cases of illness are reimbursed. With Australia, Finland also has an agreement covering medical treatment during a temporary stay in the other signatory country.

Partial reimbursements for fees of private service providers, medicine and travel is provided by the National Health Insurance. It provides also for the sickness allowance to compensate for loss of income due to incapacity for work lasting less than a full year.<sup>11</sup> The system is perhaps the most universal in Europe in the sense that not only are all employees and self-employed included, but also those who do not have income (home-makers or students). Criterion of residency and work is laid down in the Act 16/2019, s. 4–13. The sickness daily allowance is income-related and payable for 300 days. Residents who are not qualifying for the income-related allowance can claim the minimum flat-rate allowance. There is also a partial sickness allowance aimed to help persons who are unfit for work to remain in work and to return to full-time work. After 300 days of sick leave, the person can apply for a disability pension.

Regarding invalidity, disability benefits are paid by Kela to provide support in everyday life, studies or work to individuals with disability or chronic illness. The criterion of the allowances is the same for nationals and foreigners as long as they are permanent residents. The residency is judged according to the Act 19/2019 – living in Finland permanently (sections 5 and 10) or filling in the minimum working requirement (sections 7 and 8). There is a waiting period (for nationals and foreigners equally) of three years. Insurance periods in other EU countries are accepted and therefore a person may be entitled to the allowances right away after moving to Finland. Disability benefits are considered sickness benefits and therefore exportable to other EU countries.

Individuals between 16 and 64 years of age who have an illness or injury that prevents from earning a reasonable living can also get compensation for loss of

<sup>11</sup> Health Insurance Act (HIA, *Sairausvakuutuslaki, sjukförsäkringslag*, 1224/2004). Unofficial translation available here: <https://www.finlex.fi/en/laki/kaannokset/2004/20041224>. Accessed 18 February 2019.

income through the pension system. To get a disability pension (*työkyvyttömyyseläke, sjukpension*), insured persons must have lost their work capacity and the incapacity is estimated to last for at least one year (this condition concerns only earnings-related pension) or due to permanent injury. The disability pension consists of the pension accrued during the insured person's work history and the projected pension component. To get disability pension under the National Pensions Act, individuals must have resided in Finland for at least 3 years after having reached the age of 16 years.<sup>12</sup>

### 10.2.3 Pensions

The statutory pension system is two-fold, with work-related and residence-based pensions. The statutory pension system consists of three defined benefit parts: the work-related statutory earnings-related pension system, the residence-based national pension system and the guarantee pension system.

Earnings-related pensions (*työeläke, pension för arbetsstagare*) for employees and self-employed are operated mainly on a pay-as-you-go basis, but some pensions are operated according to the principle of partial funding. Pensions are based on annual earnings and age. The scheme is defined-benefit. The earnings-related system is fully mandatory, but it is run by private pension insurance institutions, company pension funds and industry-wide funds. Employers and employees finance earnings-related pension together.

The residence-based, non-contributory, national pension (*kansaneläke, folkpension*) is tested against income from the earnings-related schemes (National Pensions Act (568/2007, *kansaneläkelaki, folkpensionslag*)). The family situation affects the amount of the national pension. There is a waiting period for both nationals and foreigners: having resided for at least 3 years after having reached the age of 16 years. There is no need to have lived in Finland continuously, but periods in Finland can be counted together. Periods lived in another EU country can also be counted. To get the full national pension, claimants must have lived in Finland at least 80 percent off the time between 16 years and 65 years of age.

The non-contributory guarantee pension (*takuueläke, garantipension*) aiming to alleviate poverty and guarantee the minimum safety net<sup>13</sup> is granted to residents who receive an old-age pension and their total gross pension income is less than €784,52 per month (as in 2019). Also foreigners (i.e. residents not entitled to national pension) who do not receive a national pension are eligible from the age of 65. Both of these residence-based pensions are tax-financed, defined-benefit and operated on a pay-as-you-go basis. Due to nearly universal coverage and the absence of ceilings,

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<sup>12</sup>The residence criterion does not have to be met if one has previously received disability allowance for persons under age 16 or if the incapacity for work started while the individual lived in Finland and before he/she reached the age of 19.

<sup>13</sup>Act on guarantee pension, *laki takuueläkkeestä, lag on garantipension*, 703/2010.

the role of supplementary pension is negligible in Finland. If the person has been covered by several different pension acts, the last pension provider awards and pays the whole pension. The Finnish Centre for Pensions (*Eläketurvakeskus, ETK, Pensionskyddcentralen*<sup>14</sup>) is the central body of the scheme. National pensions are administered by the Social Insurance Institution (*Kansaneläkelaitos, Kela, Folkpensionanstaltet, FPA*<sup>15</sup>).

It is possible to start in a new employment or work as self-employed while drawing an old-age pension. From January 2017, the retirement age for earnings-related pensions is raised by 3 months annually until it reaches 65 years in 2027. Thereafter, it will be linked to life expectancy. Persons born in 1962 are the first age group who have a lowest possible retirement age of 65 years. For persons born in 1965 or later, the retirement age is linked to life expectancy. Currently, the retiring age for the national pension is 65 years, but for those born 1965 or later, the retirement age in the national pension scheme and the earnings-related pension scheme will be adjusted with the life expectancy and determined at the age of 62 years. The longer one works and the later one retires, the higher the pension will be.

Earnings-related pensions can generally be exported to any country. Also, all social security agreements concluded by Finland cover pensions. The agreements with the United States, Canada, Chile and Israel cover even national old-age pensions and survivors' pensions. The agreement with Australia only applies to old-age pensions, whereas the agreements with India, China and South Korea cover earnings-related pensions. Payment abroad of an earnings-related pension continues regardless of the country to which one has moved. However, national pensions can only be exported in other EU countries. Guarantee pension is for residents only. If the stay abroad is considered temporary (less than 6 months), it does not affect one's national or guarantee pension.

#### **10.2.4 Family Benefits**

The national, compulsory sickness insurance scheme for all inhabitants provides for earnings-related benefits in case of maternity or paternity for economically active parents. Parents who are not working are eligible for a minimum allowance. Thus all residents are eligible. The residency is judged according to the Act 19/2019, although there is a waiting period. Both parents (nationals or foreigners) must have fulfilled a period of insurance in Finland for at least 180 days immediately before the expected date of confinement. Insurance periods in other EU countries and Israel are also accepted. Only third-country nationals coming straight to Finland cannot have insurance periods accepted (Kotkas 2019).

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<sup>14</sup><https://www.etk.fi/en/>. Accessed 18 February 2019.

<sup>15</sup><https://www.kela.fi/web/en/pension>. Accessed 18 February 2019.

Kela pays the maternity allowance (*äitiysraha, moderskapspenning*) for 105 days. The gross compensation level in the average income group is about 75%. After maternity leave, parental allowance (*vanhempainraha, föräldrapenning*) is paid for 158 days. The compensation rate is about 70% income at the median income level. The parental leave can be shared between the mother and the father, but they cannot receive it at the same time. The paternity leave (*isyysvapaa, pappaledig*) can last up to 54 working days. Fathers can choose to stay at home for 1 to 18 days at the same time as the child's mother while she is paid maternity or parental allowance. The rest of the leave can be taken after the parental allowance has ended. There is no statutory continuation of payment, but collective agreements provide for the continued payment of wages and salaries for employees during part of the maternity and paternity leave, and a few agreements during part of the parental leave. If the employer pays the salary, the allowance is paid to the employer. The allowance is exportable only to EU countries, although residing in any other country for less than 6 months will not end the payment (Kotkas 2019). After parental leave, parents can take child care leave until the child (or youngest child) turns three years old. Child home care allowance (*kotihoidontuki, barnvårdstöden*) is paid during that period. Home care allowance can be exported to EU countries due to one of the parents working in Finland. It cannot be paid to third countries. However, the family keeps receiving home care allowance during customary vacations abroad. Usually under 3 months residing abroad is considered customary.

The main child-related cash transfer is the universal child allowance (*lapsilisä, barnbidrag*) paid to the guardian of the child by Kela.<sup>16</sup> It is tax financed, flat-rate and paid to every child under 17 years of age. The amount of the benefit depends on the number of children. The child allowance is for children residing permanently in Finland. The permanency of the residency is judged by the Act 16/2019. However, if the parent works in Finland and the child reside in another EU country, the child can be entitled to child allowance. Third-country nationals need longer working periods as stipulated in the Child Allowance Act section 1a. Child allowance is included in the Social Security Agreement between Finland and Israel.

### **10.2.5 *Guaranteed Minimum Resources***

The Constitution of Finland stipulates that those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care (Sect. 19). This applies to all people residing in Finland (including undocumented migrants or tourists without means), as all of them are provided at least emergency healthcare and minimum income. Those residing in Finland permanently, however, are entitled to social assistance (*toimeentulotuki, utkomstöd*) on

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<sup>16</sup> Child Allowance Act, *lapsilisälaki, barnbidragslag*, 796/1992.

more permanent basis.<sup>17</sup> Social assistance is paid only for people residing in Finland. However, applying the Act on Social Assistance does not require *permanent* residence as the basic benefits described earlier do (Kotkas 2018; Van Aerschot 2017).

Again, nationality is not an eligibility criteria for accessing social assistance. This last resort benefit is meant for those who either are not entitled to basic benefits or - as more often is the case – whose basic benefits are insufficient to cover basic expenses. To qualify for social assistance, the claimant is supposed to apply for all other benefits (unemployment allowance or labour market subsidy) and be registered as jobseeker. The benefit is means-tested considering all type of household's income (except for assets necessary for living), although disability benefits, maternity grant, reimbursement on expenses, activity supplements of unemployment benefits or work income up to €150 per month do not affect the level of the benefit. Social assistance can be granted as long as the relevant conditions are met, but the benefit can be cut by 20–40% if the claimant refuses to participate in activation measures, search for a job, or participate in the immigrant integration plan (only for foreigners). The basic social assistance is managed by Kela and municipalities cater for additional and preventive social assistance.

To apply for Finnish citizenship, family reunification or a permanent residence permit, one must be able to provide for himself/herself. Although the occasional take-up of social security benefits or even social assistance is not considered harmful, the frequent take-up of such benefits is. Even EU nationals can be considered as a burden if drawing constantly on social benefits, especially on social assistance.<sup>18</sup> The authorities responsible for residence permits do not, however, generally receive information on whether a foreigner has been granted social assistance in Finland (Kiuru 2014). However, the discretion of this criterion should take into consideration all the facts including whether the take-up of social assistance has been intentional or happened for reasons beyond one's control (Alien Act S39, Kotkas 2018; Palander 2018b).

## 10.3 Conclusions

For a long time, Finland has been mainly a country of emigration and started to attract large numbers of immigrants only during the past decades. These demographic changes have challenged the national welfare system that had to efficiently respond to the different needs of such diverse populations. The current Finnish social protection system treats nationals and legally residing foreigners on an equal basis. The eligibility criteria, sanctions, waiting periods or amount of benefits are

<sup>17</sup> Act on Social Assistance (*Toimeentulotukilaki*, *Lag om utkomstöd*, 1417/1997). English translation available here (without the latest amendments): <https://www.finlex.fi/en/laki/kaannokset/1997/19971412>, accessed 18 February 2019.

<sup>18</sup> See case 2016:75 of the Supreme Administrative Court in which a German family was repatriated due to constant drawing on social assistance.

the same irrespective of nationality. Coverage is gained mainly through residency. If a residency is considered permanent, a person is usually covered once he/she moves to Finland. Also working in Finland entitles to benefits, providing that one fulfils the earning requirement. Getting into the country is therefore an important phase and the regulations stipulated in the Alien Act condition migrants' access to social protection in Finland. As Kotkas (2018, 2019) highlighted, the social protection system is relatively equal, but getting into it might not always be equal.

Even if foreigners are covered by the Finnish social protection system, they may not always gain advantage of it as nationals do. The services provided may not always cater for migrants' needs. For example, the health services do not reach immigrants well enough, especially services for mental health, nor is equal treatment of multinational clients always easy (Castañeda et al. 2012; Valtiontalouden tarkastusvirasto 2014; Kalliomaa-Puha 2017). In many cases, EU and non-EU foreigners are treated equally in terms of access to social benefits, but there are also many examples where EU nationals benefit from an easier access. To be able to work in Finland, third-country nationals need residence permits, while EU nationals may move to Finland and start working without them. There are various types of residence permits which may have an effect on social rights and the possibility to get entitlement through work. Third-country nationals may need longer working periods to qualify for certain benefits such as the Child Allowance. Also, the length of one's stay and the reason of one's residence matter. For example, asylum seekers' residence is considered temporary and therefore this group has less rights. Persons coming to Finland only to study are in most cases not entitled to benefits. The length of the stay affects, for instance, the amount of national pension (pro rata-principle). Children get social protection easier than adults. A person's behaviour also affects the amount of the benefits. Full amount of unemployment benefits and social assistance require looking for a job and being active. Drawing on benefits frequently can cause turning down the application for residence permits or citizenship (Kotkas 2018; Hakalehto and Sovela 2018).

Receiving cash benefits from abroad is quite flexible as long as non-residents remain in the scope of the Finnish system, which in most cases is for six months. Taking care of one's social security affairs is relatively easy from abroad since most correspondence with the authorities can be done online. However, services-in-kind are impossible to export, which may sometimes cause difficulties when coordinating social protection with countries with cash benefits typical to insurance based system.

Immigrants' social security issues, exporting Finnish benefits and coordination of social security benefits have gained salience in political debates in recent years. Political pressures to change the legislation regulating access to social benefits in Finland have emerged especially in a context in which benefits have been cut due the economic recession affecting the country. Furthermore, the access of migrants to social protection has also changed over time with the different EU directives which are now fully implemented in Finland. Additionally, the efforts to increase work-related immigration in recent years have become controversial and legal scholars have emphasized the fact that ensuring migrants' access to social protection is not

necessarily a political issue, but rather a legal – human rights – question (Aer 2016; Kiuru 2014; Nykänen 2018; Palander 2017).

The Finnish system is, however, about to go through a big change. Two successive governments have been trying to launch the largest social policy reform ever in Finland, but failed to reach political consensus. The main objectives are to fix observed inequalities in access to social and health care, lacking customer orientation and cutting growing expenses. The most heated discussion so far has been on increasing customer choice. That may have implications on immigrants' access to services. It may not be that easy to get the necessary information in a foreign language to be able to find and choose the suitable service. In addition to this reform on social and health care, a simplification of the cash benefits system is also planned for.

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# Chapter 11

## Migrants’ Access to Social Protection in France



Lola Isidro and Antoine Math

### 11.1 Overview of the Welfare System and Main Migration Features in France

The French social protection system is characterized as both extensive and fragmented, having for long relied mostly on social security or insurance benefits, but having much evolved over the last decades (by including more universal and means-tested schemes, having known restrictions on social insurance protections and being at the dawn of a significant retrenchment). France is the European country having also first known modern immigration, with important inflows of migrants going back to the industrial Revolution at the end of the nineteenth century. Since the mid-1970s, the country has implemented publicly debated restrictive immigration policies.

#### 11.1.1 *Main Characteristics of the French Social Security System*

Even if social assistance and social insurance schemes were already implemented before World War (WW) II, the real birth of the modern French social protection system took place with the creation of “*Sécurité sociale*” in 1945. This system

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aimed at a universal coverage by developing ambitious contributory schemes that is pursuing Beveridge's goals using Bismarck's means (Palier 2005). Having most features of a conservative regime (Esping-Andersen 1990), the French system is also characterized by a strong fragmentation: social security regimes differ according to socio-professional categories, while other schemes are the responsibility of social actors (employees' and employers' representatives), the central State or local governments (Barbier and Théret 2004).

After WWII, the social protection system witnessed considerable developments. Schemes improved in terms of performances and coverage with the rise of old-age pensions and the extension of social insurances ("generalization"), especially health care. During the 1970s and 1980s, the system knew a first shift towards more means-tested schemes, through the creation or extension of new ones (social assistance minimum guaranteed income), the gradual replacement of more universal programmes (family benefits) by means tested ones, and towards a certain "universalization" of previously contribution-based schemes (such as health care). These evolutions (means-testing, generalization and universalization) were accompanied since the mid-1980s by strong pressures on social budgets and important restrictions to social insurance rights such as old-age pensions and unemployment benefits. This reconfiguration of the French social system is the result of ideological, demographic and economic factors in a context characterized by mass unemployment, strong social and spatial inequalities, and a more competitive and globalized economic environment putting a stronger pressure on social and fiscal systems (Concialdi 2011). With the austerity orientation implemented since the beginning of the 2010s, a new stage has been reached, with reforms aiming at downsizing the social welfare (Math 2015).

In 2017, social protection expenditure amounted to 33.7% of the GDP, still placing France at the top of developed countries. Benefits represented 94% of this total (31.7% of the GDP). Old-age and survivor benefits (pensions, old-age guaranteed minimum income, social assistance or long term care benefits for the elderly) represented almost a half (45.5%) of all benefits. Health benefits (including invalidity, work injuries and professional sickness) represented 35.1%, family and maternity benefits 7.6%, unemployment and employment insertion benefits 6.1%, housing benefits 2.5%, and poverty and social exclusion measures 3.2% (Table 11.1).

### ***11.1.2 Migration History and Key Policy Developments***

Since the end of the nineteenth century, immigration has become a very important phenomenon in France. As the birth rate in France had been much lower than in other European countries during this century, the insufficient demographic growth was a problem in the context of the industrial Revolution. For this reason, France started to welcome workforce from border countries (Belgium, Spain, Italy). To control those entries in a context of nation building (Noiriel 1988), the first important immigration act (Act on residence of foreigners and protection of national

**Table 11.1** Social benefit expenditure in France (2017)

	in billions of €	in %
Health	208,8	28,7
Invalidity	40,1	5,5
Work injuries & professional diseases	6,9	0,9
Old age	292,3	40,2
Survival	38,7	5,3
Family	55,2	7,6
Employment insertion	4,0	0,5
Unemployment	40,3	5,5
Housing	18,5	2,5
Poverty and social exclusion (not included elsewhere)	23,1	3,2
<b>Total</b>	<b>727,9</b>	<b>100,0</b>

Source: *La protection sociale en France et en Europe en 2017 – édition 2019*, DREES, coll. *Panoramas de la DREES, Ministère des affaires sociales*, Paris

labour) was adopted in 1893.<sup>1</sup> During WWI, France also called in migrant workers mostly from French colonies in Africa and Asia.

The lack of workers (due to long-lasting low birth rate and war) and the arrival of people fleeing persecutions (Russians, Armenians, Jews from Eastern Europe, Italians) led to significant inflows during the decade following WWI. The main flows came from Italy and Poland. The share of immigrants (born a foreigner and abroad according to the French definition) increased from 3.5% in 1921 to 6.6% in 1931.<sup>2</sup> After the Great Depression, in a context of rising unemployment and economic difficulties, restrictions were implemented during the 1930s with the rise of nationalist and xenophobic ideologies. Several acts were passed to protect the national labour market (1926; 1932; under the Vichy regime). The share of immigrants decreased from 6.6% in 1931 to 5.6% in 1936 and 5% in 1946.

The National Office of Immigration (NOI) was created in 1945, under the supervision of the Labour Ministry. The office was supposed to control the recruitment of migrant workers. However, employers quickly circumvented the procedure and directly recruited workers in their countries of origin, bringing them to France in a context of rapid economic growth. The share of immigrants increased from 5% in 1946 to 7.4% in 1975, with most of them coming from Portugal, Spain and former colonies of North Africa (Algeria, Morocco, Tunisia). NOI has thus been led to deliver *ex post* authorizations until the late 1960s (Spire 2005).

However, anticipating first signs of economic slow-down and fearing a replacement of national workers by migrant workers, the Government announced the suspension of immigration in 1974 and the administration started to take into

<sup>1</sup> *Loi relative au séjour des étrangers en France et à la protection du travail national*

<sup>2</sup> All statistics on immigrants and foreigners come from Census data (INSEE, national statistical institution).

account the present and future situation of employment considering the profession requested by migrants and its localization.<sup>3</sup> The impact was immediate: in 1965, 80% of the attribution of residence permits were motivated by work, whereas in 1975, this rate fell to 20% (Thierry 2008). The renewals of work and residence permits were also affected. Family immigration was restored in 1975 as its suspension violated the right to respect for family life protected by the European Convention on Human Rights. However, family reunification was still not encouraged and it continued to be restricted as well as other types of immigration (refugees, students, workers, etc.). This was also the moment from which immigration started to become a permanent publicly debated issue in France. In a context of economic slowdown and rising mass unemployment, the share of immigrants from the total population remained stable between 1975 (7.4%) and 1999 (7.3%), while the share of foreigners decreased from 6.5% to 5.5%.

Since the 1990s, immigration laws were reformed many times, leading to a more restrictive regime for entering and residing in France. Immigration also started to gain salience in public debates, being often portrayed as “a problem” (Hmed and Laurens 2008). Despite these restrictions, immigration flows (the causes of which are mostly external to France or linked to colonialization ties) slightly increased over the last two decades, although still remaining at low levels when compared to other Western European countries. The annual flows of foreigners arriving in France passed from around 190,000 from the mid-2000s to 253,000 in 2015. The share of immigrants increased from 7.3% in 1999 to 8.5% in 2010 and 9.3% in 2015 (with a corresponding share of foreigners of 5.5%, 5.9% and 6.7% for these years). Yet, given rising outflows, the estimated net immigration remained extremely low, representing only around 50,000 per year since the beginning of 2010s, i.e. less than 0.1% of the total population (INSEE 2019). In 2015, 44.6% of all immigrants (born a foreigner and abroad) were born in Africa, 35.5% in Europe, 14.3% in Asia and 5.6% in America or Oceania. In comparison, recent immigrants come slightly more from Europe, Asia and America and less from Africa: 37% of immigrants arrived in France in 2016 are born in Europe (Italy, Portugal, the UK, Spain, and Romania as main countries of origin), 35.7% in Africa, 16.2% in Asia and 11% in American countries.

If growing restrictions to enter or stay in France since the 1990s have not stopped immigration flows, they have however prevent more people from entering the country and led to more and more human rights violations, especially through various repression and deportation measures. The restrictions have also had the consequence of maintaining in or sending back to irregularity more foreigners and for longer periods. They have also strongly increased the share of foreigners living in France with short duration and precarious residence permits (Math and Spire 2016). This has destabilized the situation for foreign residents and led to well documented negative effects for their integration, especially for accessing the labour market or the welfare system (Math 2016b).

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<sup>3</sup> Art. L. 341–4 (now art. R. 5221–20) of the *Code du travail*.

The number of French citizens living abroad has much increased over the last two decades. Their number is estimated at 3.5 million, even if at end 2017, only 1.8 million were officially registered at diplomatic French authorities. Half of them are dual nationals. Half of them live in a European country (37% in a European Union (EU) Member State). The five first countries of destination, summing up 40% of French nationals living abroad, are Switzerland, United States, United Kingdom, Belgium and Germany.

## 11.2 Migration and Social Protection in France

The conditions that define foreigners' access to the French social protection schemes can be better understood by analysing five possible requirements or obstacles: residence (on the French territory), anteriority of presence (prior residence), regularity (according to immigration law), anteriority of regularity (prior regular residence) and regularity of the entry for children.

Social protection schemes are generally aimed only at the person (national citizen or foreigner) residing in the country. This means actually being present in a stable manner and not just occasionally in France, either by having one's permanent household, or by having one's main residence in France (being present more than six months per year is generally a sufficient condition to remain resident). Consequently, persons residing abroad are excluded from most French social protection schemes, except for old-age contributory pensions. However, the residence condition can be levied (and the benefits may be exported) on grounds of international conventions, the European coordination of social security systems or bilateral social security conventions.

Some form of anteriority of presence or residence may additionally be required for both national citizens and foreign residents. Typically, this refers to a prior residence of three consecutive months in order to be eligible for health care coverage (some groups are exempted from this condition, such as students, family members of an insured person, etc.).

EU and non-EU foreigners also have to reside regularly in France to become eligible for most social benefits. This condition is rather new in the social protection system. It was actually introduced for some schemes at the same moment as immigration policy was tightened in the mid-1970s and then extended to most social protection schemes in 1993, as a mean for controlling immigration more strictly (Isidro 2017). The definition of regularity, e.g. the list of documents accepted for non-EU and non-European Economic Area (EEA) foreigners, may vary from one benefit to another. The regularity for EU/EEA foreigners is defined by EU law, but one may observe a rather restrictive and contestable application by French social protection bodies. For some guaranteed minimum income schemes, non-EU foreigners may also have to prove having residence permits and authorizations to work for a long period of time: five years for the general guaranteed minimum income (RSA) and 10 years for the old-age one (ASPA). However, this requirement does

not apply for national citizens, EU/EEA foreigners, refugees and Algerians (the latter are protected by a specific international text requiring equal treatment). This condition is rather new and has been introduced as a mean of excluding more foreigners, at a moment when any formal exclusion of foreigners or condition of nationality was banned by Constitutional and European Courts.

Additionally, non-EU/EEA children born abroad have to enter France through the family reunification procedure in order to qualify for family, housing and guaranteed minimum income benefits. This restriction, that has led to the exclusion of numerous families, was introduced in 1986 by the newly elected right-wing government as a direct response to the far right pressures with the entry at Parliament of the xenophobic National Front party.

### **11.2.1 *Unemployment***

There are two main unemployment benefit schemes in France for private sector employees: a compulsory unemployment social insurance financed by social contributions and a tax financed unemployment solidarity or assistance.

To be eligible for the unemployment insurance benefit, one must be involuntarily unemployed and have worked for at least 6 months during the last 24 months (for unemployed under 53). The benefit is earnings-related. The duration depends of the number of days worked during the past 24 months (ranking, in general, between a minimum duration of 6 months and a maximum duration of 2 years).

To be eligible for the unemployment assistance benefit (*allocation de solidarité spécifique*), one has not to be entitled or have exhausted entitlement to unemployment insurance benefits and have worked 5 years as an employed person during the 10 years preceding the end of the working contract. The benefit is flat rate (16.74 € per day in 2020) and is means-tested at the household's income level. It is renewable every 6 months.

For both schemes, one also has to be registered as unemployed. To do so, one has to be effectively and permanently looking for work; conform to a personalized back-to-work action plan; be physically able to work; not to collect early retirement benefits or have reached the statutory retirement age. Furthermore, registered unemployed must reside in France, unless scarce possibility to export the benefit during 3 months in another EEA country, as specified by Regulation 883/2004 on the coordination of social security systems (no such possibility exists with current bilateral social security conventions).

This residence condition applies for both nationals and foreigners. However, when registering as unemployed, third-country nationals are additionally required to prove regular residence. This can be done by providing one of the residence permits listed in Article R.5221-48 of the Labour Law (*Code du travail*). The definition of regularity (i.e. the list of residence permits) is particularly stringent, so that some third-country nationals with legal residence and authorisation to work who have also paid contributions cannot actually register as unemployed, and thus

cannot become eligible for unemployment benefits (for instance, foreigners with “student” or “temporary worker” residence permits). This regularity condition is the main and only difference that can be identified between non-EU foreigners and other groups in terms of accessing unemployment benefits.

Being unemployed (and/or receiving an unemployment benefit) may affect EU and non-EU foreigners' access to naturalization, as the latter depends on the administrative appreciation of social integration and income. Indirectly through the level of resources, it may also have an impact on the residence right after 6 month of unemployment for EU foreigners (not having already acquired either a permanent residence right or a residence right as a family member of an EU citizen with the right to reside) that has worked less than 12 months before being unemployed (otherwise he/she conserves his/her worker status as long as he/she is registered as unemployed under EU law). Being unemployed may also raise problems for non-EU foreigners asking for the renewal of certain residence permits linked to employment (such as “temporary worker”). For non-EU foreigners, being unemployed may lead to a refusal of their application for family reunification, as the later depends on a minimum level of stable income.

### **11.2.2 Health Care**

Health care (sickness benefits in kind) was initially built as a professional “bismarckian” contributory system, but has been extended over time to become a basic universal scheme. Around 99% of the population was already covered at the end of the 1980s (Math 2015). It is a compulsory social insurance scheme with affiliation based on working activity criteria or, alternatively, permanent and regular residency. The system is financed by a mix of resources (contributions, taxes, public authorities' participation). It covers nearly all residents except for irregular foreigners and some newcomers during the first 3 months of their stay in France. The exclusion of undocumented migrants was implemented in 1993 by the then newly elected right-wing government.

Sickness and invalidity benefits in cash, on the other side, have remained a compulsory social insurance scheme for the employed and financed by contributions.

The access to sickness benefits in kind depends on showing documents that prove either a working activity or residence during the former 3 months. EU/EEA foreigners will have also to prove by any means that they are legally residing under EU law. Non-EU foreigners have to provide a residence document (in a list stated by an official text<sup>4</sup>). This is an obstacle for foreigners having immigrated legally to actually access health care (for instance, asylum seekers sometimes wait a long time

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<sup>4</sup>Arrêté du 10 mai 2017 fixant la liste des titres de séjour prévu au I de l’article R. 111–3 du code de la sécurité sociale

for getting the necessary documents that are accepted for being affiliated to health care).

To stay eligible, one has to continue residing in France, even if temporary stays abroad are accepted (living abroad more than 180 days per civil year is a presumption for not residing in France). There are possibilities to export benefits in kinds in the framework of the European coordination of social security systems, either permanently (e.g., for pensioners with S1 form), or temporarily (e.g., for not programmed health care, with the European Health Insurance Card). There are also some scarce possibilities to export benefits in kind within the framework of the 41 bilateral social security conventions passed with non-EU/EEA countries.

Sickness benefits in cash (contributory social scheme for the employed) are earnings related. To access these benefits, individuals have to provide a declaration form filled by a doctor (*avis d'arrêt de travail*). For foreigners, there is a regularity condition that has most often already be checked through health care affiliation. There is a condition of residence for all, with some possibilities to export benefits in cash in the framework of the European coordination of social security system or in the framework of some of the bilateral social security conventions signed with non-EU/EEA countries.

Invalidity benefits (pensions) in cash (contributory scheme for the employed) depend on previous earnings and degree of invalidity. To access invalidity benefits, one has to provide a medical form, a notice of tax income and a national identity card or passport if national/EU/EEA citizen, or a residence permit (or equivalent document) if non-EU foreigner. There is a condition of residence for all, but invalidity contributory pensions are exportable to EU/EEA countries and within the framework of most of bilateral social security conventions passed with non-EU/EEA countries. There is also a non-contributory benefit for invalidity pensioners with low incomes (*allocation supplémentaire d'invalidité*). This invalidity guaranteed minimum income benefit is not exportable and an additional condition is required for non-EU foreigners only: having had residence permits and authorizations to work for the last 10 years, with some exceptions.

Access to naturalization for EU and non-EU foreigners may be difficult for sickness or invalidity benefits recipients since it depends on social integration and incomes. Through the level of resources provided by the benefit, it may also have some negative impact on the right to reside of EU foreigners (not having already acquired a permanent residence right or not having a residence right as a family member of an EU citizen having a residence right). The resident permit that depends on an employment activity may be not renewed for non-EU foreigners living on such cash benefits. Family reunification applications of non-EU foreigners may also be refused since it depends on a minimum income level and the stability of this income.

### 11.2.3 *Pensions*

The French contributory old age pension scheme for private sector employees is composed of a basic social insurance system (*assurance vieillesse* or *retraites de base de la Sécurité sociale*) and supplementary ones (*régimes de retraites complémentaires*). Both are compulsory and function on a pay-as-you go principle: the contributions of working people directly fund the pensions of people who no longer work. The amount depends on earnings, contributions and the duration of affiliation. For those having too low income, a means-tested non-contributory benefit (*allocation de solidarité aux personnes âgées* - ASPA) may be granted. It functions as a guaranteed minimum income completing incomes up to a certain amount, 903.20 € for a single and 1402.22 € for a couple (2020 amounts).

For social security pension, the person has to provide his/her passport/identity card and the pay slips of the last 12 months if he/she still works. Other pieces may be required to validate non-working periods: unemployment and sickness leaves, charge of child(ren), invalidity, etc. Any person, French or foreigner, is eligible to contributory pensions wherever he/she resides. However, resident non-EU foreigners have to provide a residence permit.

For the old-age minimum guaranteed income (ASPA), individuals have however to reside in France (EU pensioners having received it since before 1992 in complement to a French contributory pension may still export it). To be eligible, one has to provide a notice of tax income and two documents proving residence in France (such as rent receipt, water, gas, phone, electricity bills, mayor attestation, etc.). The eligibility and amounts are revised each year. EU/EEA foreigners also have to prove that they are legally residing in France under EU law. Formally, there is no minimum period of prior residence in France for EU/EEA foreigners. However, given requirements of residence right for inactive EU citizens without sufficient resources (unless having already acquired a residence right, not as inactive), only EU foreigners with rather longstanding residence in France are actually eligible. Third-country nationals must not only have a residence permit but also prove regular and continuous residence with an authorisation to work for the last 10 years. In practice, this rather new condition excludes most non-EU foreigners. Some are exempted by law from this "10 years" condition (refugees, French army veterans and Algerians).

Under French law, there is no condition of residence for contributory old-age pensions, whichever the nationality. The European social security coordination and the 41 social security bilateral conventions provide for some coordination for people having worked in two or more countries ("totalisation" of rights). There is no possibility to export the old-age minimum guaranteed income. Moreover, receiving ASPA may affect access to naturalization or family reunification that depend on conditions such as social integration and incomes. The level of income required for family reunification is much higher than this guaranteed minimum income so that a long standing ASPA recipient will also have high difficulties to naturalise in France, and will almost never obtain family reunification.

### 11.2.4 Family Benefits

Family benefits and maternity benefits in kind are non-contributory benefits, while paternity and maternity benefits in cash are contributory. Benefits provided during parental leave are partly contributory. There are several types of family benefits whose eligibility conditions and amounts depend on many factors: number and age of children, income, housing and activity status, family configuration, etc.

For maternity and paternity benefits in cash, prior contributions are required. This condition can be easily fulfilled since, for instance, having worked full time during 1 month during the past 3 months is sufficient. There is also a residence condition. There are possibilities to export maternity and paternity benefits in cash only in the framework of the European social security coordination or some of the 41 bilateral social security conventions with non-EU/EEA countries. For foreigners, there is also a condition of regularity. As the non-EU foreigner has to be affiliated to health care social insurance (benefits in kind), he/she has generally already provided a residence permit, if not he/she is required to so.

For family benefits, including the parental leave benefit, one has to fulfil a form and provide an identity card/passport and identity documents for the children. Both the parent and the child have to reside on the territory. There are some possibilities to export family benefits in the framework of the European coordination of social security system. No such possibility exists in the framework of bilateral social security conventions. However, some conventions include the possibility for a person actually working in France and having children remaining in the other country to receive, not the normal French family benefits, but some very small special benefits specifically defined by this convention.

EU/EEA foreigners have also to prove by any means that they are legally residing in France under EU law. Non-EU foreigners has to provide one of the residence documents listed at article D.512-1 of the Social Security Code. This list is restrictive and excludes some foreigners residing legally in France. Additionally, for a non-EU child (at a non-EU foreigner's charge) not born in France, the immigration medical certificate delivered in the framework of the family reunification procedure is required (some children are exempted from this condition, such as children of refugees, scientific residence permit holders, etc.). This excludes many non-EU families from accessing family benefits.

### 11.2.5 Guaranteed Minimum Resources

The general basic guaranteed minimum income (*revenu de solidarité active, RSA*) is attributed at the household level and complete income up to certain level depending on the size of the household (559.74 € for a lone person in 2020). The recipient is required either to be registered as unemployed or to sign a social integration

contract. The beneficiary has to reside in France and there are no possibilities to export this benefit, even through international conventions.

Foreigners have also to reside regularly. EU/EEA foreigners have to prove it by any means. As, in general, inactive EU citizens must have sufficient resources to be legally resident, only those having a right to stay on another specific ground included in EU law may be eligible for the benefit: those having already acquired a permanent residence right, those having a residence right as a family member of an EU citizen (him/herself having a right to stay), those having a residence right as workers (or as ex-worker having conserved one's worker status), etc. Non-EU foreigners have to justify a residence permit with an authorisation to work. And, unless some exceptions (refugees, permanent or "10 year" permit holders), they have to prove having been residing regularly and continuously and with an authorisation to work for the last 5 years. As the police administration often renews residence permits with delays, leaving periods of sometimes some weeks without any document, this leads to the exclusion of non-EU foreigners even residing legally sometimes from decades.

Receiving RSA may have an effect on naturalization that depends on social integration and income. Family reunification for non-EU foreigners is not possible given the required level of income. Non-EU foreigners also have problems to stay in a regular situation if they hold a residence permits depending on a professional activity (such as "temporary worker").

### 11.3 Conclusions

Several conditions may constitute obstacles to social protection for non-national residents and non-resident nationals. These conditions have evolved over the last decades, as publicly debated restrictions were introduced in immigration legislation.

Until 1998, the national requirements reserved non-contributory benefits (guaranteed minimum income for old age or disabled people) to national citizen and, since the 1970s and after ECJ decisions, to EEC (EU) foreigners, thus excluding non-EEC foreigners (Izambert 2018a). This so-called "condition of nationality" was however contrary to the principle of equality and the prohibition of discrimination protected by the French Constitution, several international texts (especially some EU treaties signed with third countries such as Algeria, Morocco, Tunisia and Turkey), and the European Convention for the Protection of Human Rights. In spite of the willingness of public authorities to maintain, and even extend it to other social benefits, this condition was eventually abolished after a long judicial fight implying constitutional and European Courts (Isidro 2017).

The residence on the territory has always been a requirement for accessing all types of social protection schemes: social security, contributory, social assistance, etc. For social security contributory benefits, it has been the only main condition for a long time. This condition (that applies equally to nationals and foreigners) has not

been much controlled over the years. However, from the mid-2000s, and following the suppression of the condition of nationality, policy makers and bureaucrats have expressed the willingness to control more strenuously this residence condition. Without any real legislative change, they released new regulatory texts and instructions in order to increase controls and sanctions. While all recipients have to comply with this condition, the controls have mainly targeted those “suspected” of being too often absent from the territory, mainly old age immigrants, especially those living in collective homes (*foyers*) and/or having their family in the country of origin. In a context of defiance towards immigration, these discriminatory controls were often implemented in highly contestable manners and led to strong sanctions for the victims (Math 2013).

As the condition of nationality was discarded, a new condition of regularity for the access of foreigners to most social benefits has been introduced and/or extended, especially through the 1993 immigration law. The definition of regularity or the lists of accepted documents/permits has however varied over time and according to benefits, so that even foreigners living legally in France but not having the “good” document may still be excluded from accessing social benefits. As immigration law has been tightened, more foreigners are now left with precarious and short duration permits, and as a consequence, may be excluded from certain social rights. Furthermore, when foreigners renew the residence permits (which is now more frequent than in the past due to the shortening of permits’ duration), immigration police authorities do not deliver the new permit in time as they should, so that social benefits are suspended for these foreigners during this waiting period (Math 2016a).

A condition of anteriority of presence or residence exists for some social protection schemes, for instance a prior residence of three consecutive months to be eligible for health benefits in kind. This condition has not changed much over time. One may mention the introduction in 2004 of a 3 months condition for accessing social assistance health coverage for irregular immigrants (*aide médicale de l’Etat*), as a result of numerous attacks from the right and far right politicians. Actually, the reform has been presented both as a means to stop its supposed effect of attraction to France and to fight frauds and abuses by foreigners (Izambert 2018b).

A new condition of anteriority (seniority) of regular residence has been recently introduced and extended for non-EU foreigners. It was introduced in 1989 for the general guaranteed minimum income: non-EU foreigners had to prove having residence permits and authorizations to work for 3 years. It was extended to 5 years in 2004. In 2006, it was extended to old-age and invalidity guaranteed minimum income, and increased to 10 years in 2012. As this five or 10 years span time must be continuous and given that immigration police authorities renew residence permits with delays, more and more non-EU foreigners living regularly in France are excluded since they cannot any longer fulfil this condition. This new condition de facto plays a similar role as a discriminatory and xenophobic condition of nationality (Math 2014, 2016b).

Ideas of restricting the access to social protection for foreigners have extended much beyond the only extreme right parties, such as the Front National that has also proposed the “preference national”, i.e., reserving social benefits to national (or

European) citizens. For instance, the right-wing candidate for the 2017 presidential elections proposed to extend the condition of anteriority of regular residence for family benefits and to increase restrictions to other benefits. In a context of budgetary austerity, such an orientation is guided not only by xenophobic rationale, it is also presented as a means for protecting the social State from new or too strong spending cuts. One may note that the access to sickness benefits in kind for certain categories of foreigners with precarious residence documents has been somewhat restricted with the "*protection universelle maladie*" 2016 reform (Comede and Gisti 2017). Since 2020, asylum seekers are also excluded from it during their three first months of stay in France. While several new social protection reforms are planned to be implemented in 2019, 2020 or 2021 (old-age pensions, unemployment benefits, guaranteed minimum income), nothing new is however decided regarding the rules applicable to foreigners.

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# Chapter 12

## Migrants' Access to Social Protection in Germany



Reinhold Schnabel

### 12.1 Overview of the Welfare System and Main Migration Features in Germany

#### 12.1.1 *Main Characteristics of the National Social Security System*

The German social protection system can be characterized as a two-pillar system. The first pillar is a social insurance system financed by contributions, while the second one consists of a variety of tax-financed welfare programs. The contributions to and the benefits from the institutions of social insurance make up the larger part of social protection finances. In 2017, public social expenditures in Germany reached 29.6% of the Gross Domestic Product (GDP), with 57% financed by social insurance contributions. Due to federal subsidies, the expenditures of social insurance exceed contributions by more than 100 billion €, so that total expenditures of social insurance make up two thirds of social protection (19.9% of GDP) (BMF 2019a, b).

Membership in and contributions to social insurance are linked to labour earnings and occupational status. The system covers the vast majority of labour force participants and their dependent family members. This infamous “Bismarckian system” goes back to the 1890s when social health insurance, disability insurance and (less known, but very importantly) job-related injury insurance were introduced within a few years. This system originally covered only blue-collar workers, but it was later extended to cover also white-collar workers. Important exceptions are professional employees (lawyers, physicians, architects, engineers) who can opt out

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of public pensions and civil servants who are directly protected by their public sector employer. Unemployment insurance was introduced in the late 1920s, whereas long-term care insurance was added in the 1990s. Thus, the German social insurance system currently comprises five types of institutions for public pension, health care, unemployment, long-term care insurance and work-related accidents.

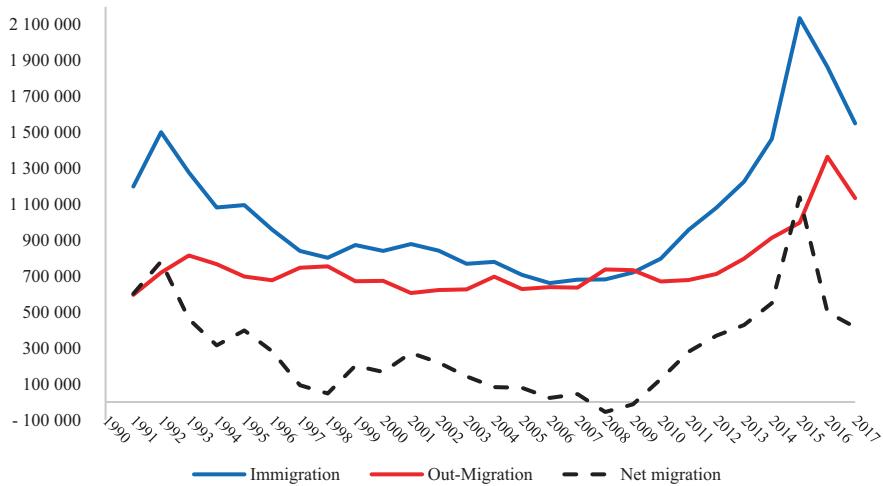
One important feature of social insurance are contribution ceilings that limit contributions. Opting out of social health and social long-term care in favour of a private insurance is feasible for high-wage earners. In contrast, opting out of public pensions (except for professional occupations) and unemployment insurance is not allowed. However, an upper ceiling limits the contribution and benefit levels. As a general rule, social insurance benefits are conditional on specific minimum periods of contributions (“waiting time”), and do not depend on claimants’ citizenship. However, restrictions to receiving benefits outside Germany may apply even for German nationals.

German welfare programs deliver basic protection independently of former contributions or occupational status. The main programs include child allowances or tax deductions (whichever yields the highest amount – *Bundeskinder geldgesetz*, 29.11.2018); the minimum income benefits for labour force participants (*Grundsicherung für Erwerbsfähige* according to *Sozialgesetzbuch* – SGB II, 18.12.2018) and for non-participants (*Sozialhilfe* according to SGB XII, 10.07.2018); and housing allowances (*Wohngeldgesetz*, 11.11.2016). Child allowances are rather universal and relatively high compared to other European countries. They are paid to European Union (EU) and European Economic Area (EEA) citizens who reside in Germany even if the child is living in other EU countries. Minimum income benefits and housing allowances require residency and for non-nationals, these benefits may be contingent on additional requirements (e.g. type of residency permit, labour force status). Thus, eligibility for tax-financed social protection is somewhat more restrictive.

### **12.1.2 Migration History and Key Policy Developments**

Migration has always been a defining part of the German history – as is also the case for other European countries. In modern times, immigration played an important role in the late industrial revolution, namely in the mining and steel industry. After World War II, Germany recruited millions of so-called “guest workers”, first from Italy, then from other southern European countries (Greece, Spain, Yugoslavia), and later from Turkey. Following the first oil shock and the rising unemployment, the active recruitment policy of foreign workers was abandoned. From the 1970s on, family migration as part of the reunification of families played a major role and became the main route of migration to Germany (SVR 2019, p.10).

In the early 1990s, immigration reached very high levels due to the collapse of Yugoslavia and the civil war. In 1992, 1,5 million people migrated to Germany and net migration totalled 780,000 (Fig. 12.1). Net migration fell below 100,000 in



**Fig. 12.1** Evolution of migration, 1991–2017. (Source: Federal Statistical Office 2019)

2004, and it even became slightly negative in 2008 and 2009. After the financial crisis and the full integration of Romania and Bulgaria (first with limited and since 2014, with free movement of labour), the inflows started to increase again, exceeding one million people since 2012. The so-called “refugee crisis” brought unparalleled inflows in 2015 and out-migration also reached one million or more since 2015. After the exceptional year 2015, net migration started to fall to the levels before the refugee crisis, albeit still in the range of 400,000 per year or 0.5% of the total population and well above the average of the last three decades.

Currently, Germany hosts around 19.6 million people with a migration background, of whom 10.9 million (around 13% of the total population) are foreigners (Federal Statistical Office 2019 and BAMF/BMI 2019). Since 2017, immigration has been (again) predominantly driven by European inflows. According to the Federal Statistical Office data (2019), two thirds of migration inflows originate from European countries, with 50% coming from EU28 (Table 12.1 in Appendix). The largest groups of EU nationals in 2017 came from Romania, Poland, Croatia, Bulgaria, Italy, and Greece. Still an important group are Turkish nationals who are subject to a special treaty.

Emigration of German citizens was very high during the nineteenth century, reaching about 5.5 million emigrants to the United States of America (USA) between 1816 and 1914 (SVR 2015). Emigration peaked in the first half of the twentieth century due to the first and second World Wars, with strong remigration afterwards. Since about 50 years, emigration of German citizens is constantly higher than re-migration.<sup>1</sup> The cumulative effect reaches about 1.5 million people since 1967 (SVR 2015). The main destination in recent years has been Switzerland,

<sup>1</sup>These numbers exclude the immigration of “native” Germans from the former USSR.

followed by the USA and Austria. While in the 1950s two-thirds of German emigrants moved to English-speaking countries (USA, Canada, Australia, and New Zealand), today, two-thirds of German emigrants stay within Europe. Mobility of emigrants is very high: 60% of German emigrants have lived in another country before. The number of persons born<sup>2</sup> in Germany who live abroad has been estimated to around four million (UNDESA 2013, cited by SVR 2015, see Ette and Sauer 2010 for mobility of skilled).

The recent waves of migration triggered several legal changes. First, the immigration during the Balkan war led to the enactment of a special minimum income benefit law for asylum seekers in 1993 (*Asylbewerberleistungsgesetz*). Until 1993, asylum seekers were granted benefits under the regular welfare law (*Sozialhilfe*). The new law was ruled as unconstitutional by the German Constitutional Court in 2012, due to evident underfunding of refugees; and was thus amended in 2015.

A package of new laws on immigration took effect in 2015 and replaced several regulations on immigration that dated back to the 1960s. The new laws were necessary in order to adopt European law. First, a new law on migration and residency for non-EU nationals (*Aufenthaltsgesetz*<sup>3</sup>) regulates entry into and exit from Germany, temporary and permanent residency permits, working permits, and new rules concerning the Geneva refugee convention. Second, a new (German) Freedom of Movement Act (*Freizügigkeitsgesetz/EU*<sup>4</sup>) regulates the rights of EU citizens according to the Freedom of Movement Directive 2004/38/EC. The package also included changes to the Asylum Law (*Asylgesetz*) and the law on the benefits for asylum seekers (*Asylbewerberleistungsgesetz*). The former regulates the conditions of entry, residency and exit of asylum seekers during the approval process, whereas the latter regulates the monetary and in-kind benefits for this group. The new package was a compromise between the notion of Germany as an immigration country and the need to stabilize the population given demographic aging and labour shortages. On one side, the new legislation facilitated the immigration of students and academics. On the other side, it tried to prevent the so-called “welfare migration” by limiting the influx of low-skilled workers from non-EU countries. For non-EU workers without an academic degree, it is almost impossible to get a temporary residency permit. The main routes are family reunification or asylum.

In response to the inflow of persons from EU countries (especially Romanians and Bulgarians), several amendments have been enacted recently that restrict or clarify migrants’ access to the German social protection system. Within Germany and in judicial decisions, the access to minimum income benefits has been disputed,

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<sup>2</sup>This number also includes second-generation migrants with a foreign passport.

<sup>3</sup>*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*, 30.07.2004, last amendment 12.07.2018. [https://www.gesetze-im-internet.de/aufenthg\\_2004](https://www.gesetze-im-internet.de/aufenthg_2004)

<sup>4</sup>*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern*, 30.07.2004, last amendment 20.07.2017. [https://www.gesetze-im-internet.de/freiz\\_gg\\_eu\\_2004/](https://www.gesetze-im-internet.de/freiz_gg_eu_2004/)

especially for EU nationals. According to recent legislation,<sup>5</sup> EU citizens cannot apply for minimum income benefits as unemployed directly after arrival to Germany. While job search is allowed for 3 months, EU nationals are required to fund their living expenses with own resources. However, receiving minimum income benefits is still possible without further restrictions if the applicant works and receives a “considerable” wage. After 1 year of legal employment, unemployment benefits and minimum income benefits are granted in the same way as for national residents. The minimum income benefit is restricted to 6 months for employment of less than 1 year.

## 12.2 Migration and Social Protection in Germany

This section examines the main eligibility conditions for accessing social benefits for national residents, non-national residents and persons residing abroad. The latter group consists of German citizens and of foreigners with a German social insurance record. In this sub-section, we focus on general rules before turning to the specifics of the five main fields of social protection.

Social insurance in Germany is linked to the labour market status and type of occupation. It is mandatory for the largest part of the German labour force, namely dependently employed except for civil servants. Self-employed can opt for social health insurance (restrictions apply to reduce risk selection) and public pensions (excluding disability benefits). Social insurance contributions on earnings above 850 € are formally shared between employer and employee. The aggregate rate is about 40% of gross earnings. Special rules and rates apply for so-called “mini jobs” (below 450 €) and “midi jobs” (between 450 and 850 €). Receiving unemployment or pension benefits requires some kind of waiting time. Citizenship does not play a role per se, but – in the case of non-EU citizens – it may be important in order to get a work permit and thus employment in the formal sector. Thus, the main obstacle lies in the immigration laws that restrict entry and work permits.

Receiving social insurance benefits abroad (exportability) is usually restricted, depending on the type of insurance and residency abroad (temporary or permanent). Details on the different parts of social insurance are explained below. Again, German citizens abroad are treated in the same way as foreign citizens, because the right to receive insurance benefits depends on former contributions and not on citizenship.

Eligibility for tax-financed benefits may be more restricted for non-German residents. Notably, EU and non-EU citizens have to prove some minimum employment duration before receiving full minimum income benefits. Residency in Germany plays an important role for tax-financed benefits. Once a permanent residency is established abroad, tax-financed benefits are withdrawn. Some exceptions may apply, e.g. for dependent children who visit a foreign school or college.

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<sup>5</sup> *Gesetz zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitssuchende nach dem II.Buch SGB und in der Sozialhilfe nach dem XII.Buch SGB*, 22.12.2016

The rest of this section is divided into five sub-sections covering the five core policy areas of social security. For each area, we discuss the eligibility conditions applicable for citizens and non-citizens, by explaining how the beneficiaries are defined in national legislations, which are the qualifying periods of insurance, residence, or age for accessing benefits, if certain schemes are means-tested or granted on a universal basis, the general procedure for submitting the claim, waiting periods, and duration of benefits. Unemployment, health, and pension benefits are usually based on social insurance rights (UB, medical treatment, and public pensions). These benefits may be complemented by “last resort” minimum income benefits (unemployment assistance ALG2, basic income for elderly). Family/child benefits and minimum income benefits are also discussed below.

### ***12.2.1 Unemployment***

The German unemployment insurance covers dependently employed (irrespective of nationality) who are working in Germany or who are temporarily working abroad for their German employer as posted workers (SGB III, chapter 2). One exception are civil servants who are covered by their public employer. The insurance not only covers unemployment benefits, but also offers job search and active labour market policies (e.g. training, subsidized work according to SGB III, chapter 3).

After 12 months of contributions, a person who becomes unemployed is eligible for 6 months of unemployment benefits (SGB III, chapter 4). The benefit duration increases with age and duration of contributions to a maximum of 24 months (age 58+ and 48+ months of contributions). The net replacement rate is 60% for persons without children and 67% for persons with at least one child. Weekly hours are limited to 15 in order to qualify as unemployed and earnings above 165 € are deducted from the benefit. No other means tests apply. Unemployed persons are also covered by the other branches of social insurance (pensions, health, long-term care) during the receipt of unemployment benefits.

Active search for work and timely cooperation with the labour agency (*Arbeitsagentur*) is a basic requirement (SGB III, chapter 8). Cooperation is usually proven by showing up at the agency and by accepting and conducting job interviews. In order to comply with these rules, an unemployed person has to show up on short notice. Thus, residency in Germany or in a neighbouring country close to the border is a fundamental requirement. Unemployed have to inform the agency if they intend to go on holidays (maximum 3 weeks).

Unemployment benefits are exportable in compliance with EU Directives or bilateral agreements (BA 2019) in the following cases:

- Cross-border commuters who are living in Germany and are insured in a neighbouring country receive German unemployment benefits according to the residency principle.

- Cross-border commuters who are living in the EU and have been working in Germany receive unemployment benefits in their country of residence.
- EU citizens who receive German unemployment insurance benefits can apply to move to another EU country to actively search for work for a maximum of 6 months. Public pension, social health and long-term care insurance provide coverage according to the German rules. However, the means-tested unemployment assistance according to SGB 2 (ALG2) is excluded for persons who do not reside in Germany.
- A bilateral unemployment insurance agreement dating back to 1968 between Yugoslavia and Germany is still in force (except for Slovenia and Croatia) and it allows exporting eligibilities from one state to another.

If unemployment benefits and other income sources fall short of a household's minimum income level, the household is eligible for additional minimum income support according to SGB II (basic income for labour force participants). Since eligibility for unemployment benefits already requires a waiting time (12 months), the restrictions in place for foreigners on temporary residency permits do not apply.

### **12.2.2 *Health Care***

Social health insurance (SHI) covers 88% of the German population (BMG 2019a, b). Dependently employed (excluding civil servants) with compulsory membership (SGB V) constitute the main group. A peculiarity of the German SHI is that dependently employed are allowed to leave the SHI if their gross earnings exceed 5062.50 € per month in 2019. Workers stay in the compulsory SHI after retirement. Several other groups are in the SHI by law: unemployed, farmers, artists, journalists, and those who do not have any other health insurance. Other persons can join the SHI as voluntary members under some conditions that try to limit negative risk selection into the SHI. For instance, privately insured – in general – cannot opt for SHI.

The SHI offers two main benefits: in-kind medical treatment and sickness pay after more than 6 weeks of sickness leave (approximately 80% of former net earnings<sup>6</sup>). Consulting a physician requires an insurance card. Reimbursement of service providers is organized centrally per quarter by the organization of physicians or by hospitals based on a point system. This has important consequences for exportability, since foreign systems follow different rules. Persons who are insured in the

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<sup>6</sup>The employer has to pay the regular wage for the first 6 weeks of sickness. After 6 weeks, the SHI pays a sickness benefit of about 80% of the last net wage. This may be replaced by disability insurance benefits if the worker cannot start working after completion of medical treatment (and the minimum contribution period of 5 years in the pension system is fulfilled). The same rules apply for nationals and foreigners.

German SHI and who are eligible for treatment in EU/EEA countries will receive medical treatment according to the rules of the foreign country (GKV-Spitzenverband 2015, 2016).

### **Temporary Stay Abroad**

For the EU/EEA (including Norway, Iceland, Liechtenstein and Switzerland), a German resident (citizen or foreigner) should use the European Health Insurance Card (EHIC) for treatment abroad. However, medical treatment is restricted to necessary emergency treatment. For other countries, a private health insurance policy is highly recommended, since physicians and hospitals in many countries demand direct payment, and (full) reimbursement in Germany may be refused by the German SHI. Cash transfers (e.g. sickness pay) are not directly affected. However, workers may have to show up in person for examination during sickness leave. For persons on sickness leave, this excludes temporary stays abroad for practical reasons.

### **Residency Abroad**

In general, moving permanently abroad terminates membership in the German SHI, since the conditions for insurance in Germany are not met, e.g. because a worker becomes eligible for health insurance in the destination country. Thus, health insurance follows residency. Moreover, the insurance of family members will also follow the rules in the country of destination. An exception are cross-border commuters, posted workers, and retirees who receive only German pensions. Retirees can keep their German SHI after moving to EU/EEA (including Switzerland), provided they have no claims to social protection in the foreign country. In this case, SHI follows the pension insurance. Retirees can apply for an E121 or a S1 card that allows full treatment in the country of residence according to the rules of this country. Retirees keep their German Health Card and can return to Germany temporarily or permanently for treatment. Retirees who move to a non-EU/EEA country lose protection by their German SHI and have to buy another form of health insurance – although they can keep their German public pension.

### **12.2.3 *Pensions***

The German public pensions are financed in a pay-as-you-go system and are regulated in social law book VI (SGB VI). Dependently employed in Germany – except civil servants – pay mandatory contributions on labour earnings (shared between employer and employee). The contribution rate in 2019 is 19.3%. Posted workers are insured in their country of origin (location of initial employment). Cross-border commuters are insured in the country of employment.

All residents in Germany who are not mandatorily insured are allowed to pay voluntary contributions. The same holds for German citizens living abroad and for EU citizens living abroad who have at least contributed once to the German public pension system. Non-EU citizens also have the right to pay voluntary contributions if they reside in the EU and have a German public pension record.

A minimum waiting time of 5 years applies in order to qualify for pension benefits. It can be fulfilled by regular contributions (mandatory or voluntary) or by special credits, e.g. for children. Employment periods in different EEA countries are added up towards the waiting time. The pension level is calculated using the sum of earnings points. Earnings points are credited to the individual pension account based on the level of annual earnings relative to average earnings. One year of average earnings yields exactly one earnings point. The sum of earnings points over the whole lifecycle is proportional to the pension level. As in the other areas of social insurance, nationality does not play a role in calculating pensions. Moreover, according to EU rule, German pensions are internationally transferable. The beneficiary is free to move abroad without any reduction in pension benefits.

The public pension insurance offers a variety of benefits: old-age pensions, disability pensions, and survivor pensions. Moreover, the German public pension insurance offers rehabilitation treatment for persons who are at risk of becoming disabled. The standard retirement age has gradually shifted up to the age of 67, starting with cohort 1947 (age 65 + one month) and ending with cohort 1964 (age 67). If a pension starts before the standard retirement age (maximum of 3 years early), it is permanently reduced by 0.3% for each month before the standard age. Later retirement leads to a bonus of 0.5% per month. Disability pensions have no age limit and are typically used before age of 60. The average age of disability retirement in 2018 was 52.2 (*Deutsche Rentenversicherung DR 2019*). In case of disability, the sum of earnings points is calculated as if the disabled person had been working until the age of 62. The actuarial adjustment is limited to 10.8%. Disability pensions of males who retired in 2018 were on average 30% lower than those of males who claimed an old-age pension (*DR 2019*). Disability is thus an important source of poverty.

In the area of pension insurance, exportability is of special importance, since pensions are based on the entire working life and the present value of pensions easily exceeds 100,000 € for an individual. Export of pension claims has at least two dimensions: the cumulation of pension claims of different jurisdictions due to international mobility during the working life and the mobility of retirees. Multilateral agreements facilitate both types by reducing the complexity and risk of international mobility (in compliance with EU Directives 883/2004 and 987/2009). These rules cover EEA citizens who have been insured in EEA countries or Switzerland (*DR 2017*). The rules also apply to non-EEA citizens in the EU, excluding Norway, Iceland, Liechtenstein and Switzerland.

EU Directives apply to all persons who have acquired pension claims in the German public pension system, irrespective of citizenship. The same holds for persons who have collected claims in the other pension systems, e.g. special pension plans for professional occupations, civil servants, farmers (*DR 2017*). Similar rules hold for survivor pensions.

Special agreements exist, namely with Turkey and former Yugoslavia due to the longstanding migration relations. Migrants from Turkey constitute the largest minority in Germany and the bilateral agreement with Turkey dates back to 1964, although it was modified in 1984 (*DR 2014*). The agreement regulates eligibility in

a similar way as in EU law. Pensions in Turkey and Germany can be accumulated without reducing the eligibility in the other country. The retiree is free to move internationally and the health insurance follows the pension insurance.

### 12.2.4 Family Benefits

Child and family benefits can be found in almost all areas of social protection ranging from minimum income benefits to social insurance. For instance, parents receive credits for children in the public pension insurance; children and spouses without own income are insured without additional contribution in the social health and long-term care insurance; unemployment benefits are higher for parents than for those without children; and additional benefits are granted to single parents. In a comprehensive empirical study on family and child-related benefits (Prognos 2014), these benefits are estimated to have reached 125 billion € in 2010, excluding benefits that relate to marital status of another 75 billion €. Family benefits that are part of social insurance benefits are treated as described in Subsections 12.2.1, 12.2.2 and 12.2.3. Family benefits in the minimum income programs follow the principles detailed in Subsection 12.2.5 below.

The child allowance/child tax deduction is the largest single part of child benefits amounting to 40 billion €. This benefit is regulated in the income tax code (*Einkommensteuergesetz EStG* §31, §32, and EStG section X). In 2019, child allowances for the first and second child are 194 € per month, for the third child 200 € and for other children 225 €. Moreover, the income tax code grants a child tax deduction. If this generates a tax relief higher than the child allowance, the exceeding tax relief is paid out. Parents are eligible if a child is younger than 18 or if a child is younger than 25 and in secondary or tertiary education. Child allowances are paid to residents in Germany or those abroad who are fully taxable in Germany (§62 (1)).<sup>7</sup> Non-EU/EEA citizens are eligible depending on the type of residence permit: permanent residence permit, temporary residence permit with the right to work or study, temporary residence permit for persons who need protection. This also implies that asylum seekers during the decision process are not eligible for child allowance, although they receive benefits according to the asylum seeker benefits law (*Asylbewerberleistungsgesetz*). EU citizens can claim child allowance even if the child and one parent are living abroad. A similar situation may occur if the child studies abroad. The child allowance expires if the eligible parent leaves Germany and if unlimited income tax liability ends. It is also worth noting that tax liability in Germany does not depend on citizenship, but on residency (180 days rule) and a myriad of bilateral agreements apply.

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<sup>7</sup>Parent benefits during the first 14 months follow the same logic of eligibility (BEEG *Bundeselterngeld- und Elternzeitgesetz*). The benefit is 67% of eligible net income or a maximum of 1800 € per month for one parent who does not work.

Maternity leave covers 6 weeks prior to and 8 weeks after the date of delivery. Full earnings are paid, and during the 8 weeks after delivery, work is strictly prohibited to protect the health of mother and child. Paid parental leave can be chosen by mother or father for a maximum of another 12 months. The replacement rate is 80% and capped at 1800 Euros per month. A total of 3 years of parental leave (with 2 years unpaid) per child are possible. No distinction is made between nationals and foreigners, although waiting periods may apply.

### **12.2.5 Guaranteed Minimum Resources**

The German law distinguishes between several types of minimum income benefits. First, a distinction is made between labor force participants (working or seeking work) and those who are temporarily or permanently out of the labour force. *Sozialgesetzbuch II* applies to the first group, whereas *Sozialgesetzbuch XII* covers the second one. The schemes do not differ in the way the minimum income is determined. The main difference is the work requirement in SGB II.

The Basic Income for Jobseekers and Workers (*Grundsicherung für Arbeitssuchende*) applies to labour market participants and their families or other household members sharing common resources. The benefit is paid to unemployed persons who seek work or to employed persons if income (or other resources) are lower than a certain minimum income. The relevant income is the total family or household income. Dependent persons also receive benefits, labelled as *Sozialgeld*. First, the minimum income threshold is determined based on the number and age of persons in the household (*Bedarfsgemeinschaft*), (quasi)rent and other characteristics (single parents, special needs, etc.). If income falls short of the living minimum, the difference is paid out as a cash benefit. Withdrawal rates apply for labour income, rising from 0% to 100%.

Note that while EU migrants cannot collect minimum income benefits as unemployed without a “waiting period”, they do receive benefits from day one on if they work and receive a “substantial” labour income (the latter is not determined by law, but by jurisdiction).

The Minimum Income for Non-Participants (Welfare or *Sozialhilfe*) is regulated in Social Law Book XII. Several categories of individuals are considered as “non-participants”. These include persons beyond the standard retirement age; those permanently unable to work more than 3 h daily who are thus considered disabled; persons who are temporarily unable to work due to bad health or because they care for dependents; or foreigners with a legal residence status who are not (yet) allowed to work. The first two are eligible for MIB for elderly or disabled (*Grundsicherung im Alter und bei Erwerbsminderung*, SGB XII, chapter 4), whereas the second group is eligible for welfare (*Hilfe zum Lebensunterhalt*, SGB XII, chapter 3). The main advantage of receiving MIB for elderly or disabled is that income and wealth of parents or children of the needy person are not considered. For other Minimum Income Benefits, parents and children may have to support their needy relatives.

Benefits are adjusted to changes in income, family composition, rent, etc. Beneficiaries have to report to the local agency if their personal conditions change. Otherwise, the level of benefits is checked annually. What is considered as “minimum income” does not differ across the different types of MIB.

EU citizens who enter Germany as jobseekers or non-employed cannot claim MIB, thus being treated differently than national residents. However, employed migrants with income below the social minimum receive a supplementary MIB (as difference between own resources and social minimum) from the beginning. Moreover, after an uninterrupted employment of 1 year, EU citizens are treated like nationals regarding MIB if they become unemployed. Then, they receive MIB permanently (as long as their means fall short of their needs). If unemployment follows an employment spell of less than 1 year, MIB is paid for a maximum of 6 months. After a legal residency of 5 years, EU citizens are treated like German nationals regarding MIB. Usually, the relevant unit is the household and the eligibility of one adult extends to all family members, even if the latter are third-country nationals provided they have a legal residency permit.

In the case of non-EU foreign residents who are not asylum seekers, the basic requirement for accessing MIB is a legal residency permit. Temporary permits (e.g. *Aufenthaltserlaubnis*) specify the type of labour market activity that is allowed. This is documented on the temporary permit. Persons who are allowed to work (and their family) can receive *Arbeitslosengeld 2* (ALG2). However, they may risk the extension of the residency permit or the application for German citizenship may be rejected or delayed. Persons with other permits (e.g. education) do not qualify for minimum income benefits, since the residency permit is conditional on having sufficient own resources. However, students are allowed to work part time to make a living. After completing the degree, academics get a special residency permit to look for a job without MIB.

The law rules out MIB for migrants who enter Germany as job seekers. Moreover, MIB is limited to the duration of the residency permit. On the other hand, permanent residence permits (e.g. *Niederlassungserlaubnis*) always include the right to work and to apply for benefits. However, they require at least a five-year legal prior residence that again is conditional on self-sufficiency. As a rule, someone who obtains a permanent residence permit has a good labour market record.

In the case of third-country nationals who apply for asylum, there is another benefit that usually grants in-kind support according to *Asylbewerberleistungsgesetz*. In many cases, the Government directly supplies housing. The level of support for asylum seekers is generally lower than in the other MIB schemes. If the application is successful, these migrants can apply for one of the regular MIBs depending on their situation, work permit or work requirements. If the asylum application has been rejected, the applicant stays in the asylum system.

Finally, it is equally important to highlight that SGB II and XII exclude benefits for persons living abroad. Also, temporary visits to foreign countries are restricted: job seekers have to apply for vacation at their job agency and retirees receiving MIB lose their benefit if they stay abroad longer than 4 weeks.

## 12.3 Conclusions

Migration patterns in Germany have changed considerably during the post-war period. The influx of the so-called “guest-workers” stopped during the 1970s, being replaced by family reunification. Two big crisis-driven immigration waves swept Germany, the first one after the collapse of Yugoslavia and the second one following the crises in the countries from Syria to Afghanistan. These immigration waves triggered legislative reactions aimed at reducing immigration incentives, especially in the area of asylum law. But legislation in the early 2000s (under the red-green coalition) also took a more liberal stance towards immigration of highly qualified persons from non-EEA countries and – following the EU Directives on freedom of movement – EEA citizens. As a result of European integration, migration patterns changed dramatically, with EEA countries becoming the leading source of German immigration. Moreover, EEA countries replaced the four Anglo-Saxon immigration countries as the leading destination of German emigration. Currently, about 800,000 people from other EU Member States arrive to Germany each year and about 500,000 leave Germany to reside in other EU countries. It is reassuring for economic policies that EU migrants display high levels of employment and have boosted German employment, while unemployment rates reached historic lows.

During the past decades, migration obstacles for EEA citizens have been lowered or abolished. The leading case is the social insurance system that provides social security for migrants and German citizens in a non-discriminatory way and greatly facilitates mobility for Germans and foreigners. However, eligibility for minimum income benefits is subject to restrictions for those who enter Germany without employment.

Main obstacles to immigration of non-EEA citizens still persist due to the restrictive law on temporary residence permits for workers. For this specific group of foreigners, there are basically three ways to legally enter Germany: student visas, academic credentials, or family reunification. It is very difficult to get a visa for workers without academic degrees from third countries, since it is often impossible to prove that a foreign non-academic degree is comparable to a German one. Thus, it is far more promising for persons from third countries to apply for asylum with the chance to get the permanent residence permit after several years as a tolerated migrant.

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## Appendix

**Table 12.1** Migration by country or region in 2017

	Immigration		Emigration		Net migration	
	All	Foreign	All	Foreign	All	Foreign
<b>EU 28</b>	<b>827.559</b>	<b>785.198</b>	<b>587.769</b>	<b>536.813</b>	<b>239.790</b>	<b>248.385</b>
Romania	219.989	219.319	151.810	151.028	68.179	68.291
Poland	152.522	148.582	119.098	114.029	33.424	34.553
Croatia	53.050	52.791	23.955	23.591	29.095	29.200
Bulgaria	78.347	78.020	49.321	48.871	29.026	29.149
Italy	63.495	61.167	39.246	36.959	24.249	24.208
Greece	30.586	29.786	17.415	16.725	13.171	13.061
<b>Other Europe</b>	<b>210.881</b>	<b>187.140</b>	<b>147.499</b>	<b>121.691</b>	<b>63.382</b>	<b>65.449</b>
Turkey	47.750	42.859	27.049	21.208	20.701	21.651
Bosn-Herz.	26.112	25.987	12.088	12.009	14.024	13.978
<b>Africa</b>	<b>66.287</b>	<b>60.913</b>	<b>37.977</b>	<b>34.024</b>	<b>28.310</b>	<b>26.889</b>
<b>America</b>	<b>74.129</b>	<b>54.203</b>	<b>53.222</b>	<b>35.115</b>	<b>20.907</b>	<b>19.088</b>
<b>Asia/Austr</b>	<b>238.243</b>	<b>220.327</b>	<b>95.453</b>	<b>82.828</b>	<b>142.790</b>	<b>137.499</b>
Syria	50.551	50.463	1.428	1.386	49.123	49.077
Irak	24.349	23.305	3.549	2.915	20.800	20.390
India	26.946	26.199	15.076	14.371	11.870	11.828
<b>Total</b>	<b>1.550.721</b>	<b>1.384.018</b>	<b>1.134.641</b>	<b>885.460</b>	<b>416.080</b>	<b>498.558</b>

Source: Federal Statistical Office (*Statistisches Bundesamt, destatis*, 2019)

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# Chapter 13

## Migrants' Access to Social Protection in Greece



Fotini Marini

### 13.1 Introduction

This chapter discusses key issues about the access of foreigners legally residing in Greece and Greek citizens residing abroad to the Greek social security system and highlights its impact on the development of a hybrid non-discrimination agenda during the financial crisis (Amitsis 2018) and the refugee crisis of 2015 (Amitsis 2016). The first section highlights the main features and developments in the fields of social security and migration in Greece. The second section examines the complex framework regulating access to social benefits and services along five core policy areas (unemployment, health care, pensions, family benefits and guaranteed minimum resources). The analysis of eligibility conditions for accessing social protection (particularly the personal scope of application) leads to the conclusion that the crisis was not used by domestic social policy makers as an argument to introduce discriminatory treatment against individuals in long-term labour mobility and cross-border mobility across Europe.

### 13.2 Overview of the Welfare System and Main Migration Features in Greece

Greece is the European Union (EU) Member State most impacted by the financial crisis (Giannitsis and Zografakis 2015), given that it had not established social safety nets for those (both national and foreigners) unable to meet their needs through market or family settings, while the national social protection model was

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strongly fragmented, and public spending focused on civil servants salaries and state pensions (Amitsis 2014). Migration has been an equally challenging phenomenon for Greece. Due to its geographical position and socio-economic advancement after the 1980s, the country has received an important number of immigrants from neighboring Balkan countries, who represent today the vast majority of its foreign population. The financial crisis has caused a new emigration wave of highly skilled Greeks (brain drain phenomenon), while migration flows from Asian and African countries have increased climaxing with the Syrian refugee crisis of 2015–2016.

### ***13.2.1 Main Characteristics of the National Social Security System***

The development of the national social security system had attracted the attention of academics and policy makers since the 1990s. The system was characterized by fragmented administrative structure, high bureaucracy, low sustainability and limited adequacy of social insurance schemes, supplemented by the lack of a concerted social safety net for persons at risk of poverty and social exclusion (until mid-2010s Greece and Italy were the only EU Member States without a General Minimum Income Scheme). The traditional Mediterranean type social protection model focused on statutory pensions, reproduced inequalities, increased costs against efficiency and jeopardized the system's viability (OECD 2013).

But international interest about the complex Greek case has been growing during the three Economic Adjustment Programmes (known also as Bailout Programmes), implemented since May 2010 by Greece and major lending international partners (European Commission, European Central Bank, International Monetary Fund). The programmes were influenced by budgetary control and social spending surveillance processes (Amitsis 2017a; Stergiou 2017). The outbreak of the crisis led to the adoption of new policy priorities, i.e. fiscal consolidation and structural rationalization of social security schemes. After almost a decade of ongoing reforms, the system remains in a controversial state of transition with serious repercussions on legal certainty and procedural transparency<sup>1</sup>.

The latest phase of the reform process that impacts the status of foreigners has been marked by the adoption of Law No. 4387/2016<sup>2</sup>, which introduced

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<sup>1</sup> The implementation of reform processes has proved time-consuming due to the limited know how of competent authorities, legal constraints related to the protection of social rights and lack of broader social and political consensus. The 2016 reform further added to the confusion since, 3 years after the enactment of Law No. 4387/2016, the actual unification of the social insurance system has not materialised yet due to the lack of a uniform benefit regulation for the new single insurance fund. Legal uncertainty is intensified by petitions for judicial review (annulment) against fundamental provisions of the reforming law submitted upon the Council of State (the highest Administrative Court).

<sup>2</sup> OJ Vol. A' 85/12.5.2016.

fundamental principles of a Single Social Security System<sup>3</sup> and unified all social insurance funds into one. Attention should be also paid to the introduction of the long-awaited national General Minimum Income (GMI) programme (Social Solidarity Income Programme) by Law No. 4389/2016<sup>4</sup> and the new single family benefit (Child Benefit Programme), established by Law No. 4512/2018<sup>5</sup>.

Law No. 4387/2016 (article 1 par. 1) stipulates that public social benefits are provided in the context of a Single Social Security System, aiming at the guarantee of decent living standards. This System includes the National Health System for health benefits, the National Social Solidarity System for welfare benefits and the National Social Insurance System for insurance benefits through mandatory schemes<sup>6</sup>.

Basic social insurance cash benefits aim at compensating loss of employment income due to pre-defined insurance risks and are, in principle, contributory and earnings-related. They include unemployment benefit, sickness benefit, maternity benefits, old age pension and invalidity pension, granted by the Single Social Insurance Fund (EFKA) and the Manpower Employment Organisation (OAED)<sup>7</sup>. Health benefits in kind (medical care, pharmaceutical products, hospitalization) for the insured<sup>8</sup>, pensioners and their dependents are financed by contributions through a compulsory health insurance scheme managed by the National Organisation for the Provision of Health Services (EOPYY)<sup>9</sup>.

Basic social insurance is supplemented by other benefits, such as the non-contributory, means-tested Child Benefit granted by the Welfare Benefits & Social Solidarity Organisation (OPEKA)<sup>10</sup>. Since February 2017, persons and households in extreme poverty are entitled to enter the national GMI scheme Social Solidarity Income (KEA). The scheme is funded by the state budget and is structured in three pillars, including a non-contributory means-tested cash benefit granted by OPEKA, work integration services and access to supplementary welfare services and benefits in kind.

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<sup>3</sup>Here the term "Social Security" (*KOINΩNIKH ΑΣΦΑΛΕΙΑ*) corresponds to a broader concept including "social insurance" (*KOINΩNIKH ΑΣΦΑΛΙΣΗ*) but not identifying with it.

<sup>4</sup>OJ Vol. A' 94/27.5.2016.

<sup>5</sup>OJ Vol. A' 5/17.1.2018.

<sup>6</sup>Affiliation to the national social insurance system is compulsory for all persons employed within the Greek territory regardless of nationality (insurance territoriality principle). However, voluntary continuation of insurance for persons out of employment is possible for pension and health care under specific conditions – see Law No. 4387/2016.

<sup>7</sup>EFKA and OAED are legal bodies under public law supervised by the Ministry of Labour & Social Affairs.

<sup>8</sup>Health care for non-insured Greek citizens and foreign residents is also provided through a special scheme funded by the state budget – see Law No. 4368/2016.

<sup>9</sup>EOPYY is a legal body under public law supervised by the Ministry of Health.

<sup>10</sup>OPEKA is a legal body under public law supervised by the Ministry of Labour & Social Affairs.

### 13.2.2 *Migration History and Key Policy Developments*

For the greatest part of its modern history, Greece has been a country of emigration rather than immigration. The first major emigration wave (1850–1930) was a result of the broader geo-political context of that era<sup>11</sup> (Kardasis and Harlafti 2006). The second wave (1945–1977) consisted mainly of labour emigration<sup>12</sup>. Estimations on the number of Greek emigrants abroad vary from 2,5 million to 4 million (Hasiotsis 2006:13; Damanakis 2010:17), with the largest populations identified in USA, Australia, Germany and Canada.

It was not until the late 1980s and as a result of the broader geo-political upheavals following the break-up of the Eastern bloc that Greece started to receive the first waves of irregular immigration from Balkan and Eastern European countries. For over 20 years, the public response to this troubling situation remained reluctant and ambivalent without any particular effort to develop a comprehensive migration management system. However, immigrants of those first waves were gradually legalized and integrated into the domestic labour market<sup>13</sup> (Ministry of Migration Policy 2018). In April 2018, there were 523,715 immigrants legally residing in Greece, the vast majority (353,826) of Albanian origin<sup>14</sup> (Ministry of Migration Policy 2018). The 2017 data show that only a small share of the foreign residents were EU nationals, with the majority originating from the Balkan area<sup>15</sup> (OECD 2018:236).

During the last decade, Greece has been facing new and complex challenges. High unemployment rates and income insecurity have taken their toll on the quality of life of both nationals and immigrants (Fouskas 2014). Since 2008, a new emigration trend can be identified with a vast number of highly skilled Greeks<sup>16</sup> seeking better prospects abroad (OECD 2018:236; Labrianidis and Pratsinakis 2015). Also, the increase of migration waves from Asia (ex. Pakistan, Bangladesh) and Africa and the recent refugee wave from Syria are bringing in a new type of migrant

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<sup>11</sup>The first emigration wave is attributed to a complex set of economic, social and political factors (violent conflicts in the Balkan and broader European region, gradual collapse of the Ottoman Empire, opportunities created by the development of international trade, migrant attraction policies in countries such as USA and Russia) and included voluntary and involuntary population movements. Most emigrants (512,000) went to U.S.A., followed by imperial Russia (280,000) and colonial Africa – mostly Egypt (120,000).

<sup>12</sup>Out of 1,3 million emigrants of that period, (more than 600,000) went to Germany, whereas large groups were directed to USA and Australia.

<sup>13</sup>Integration processes were supported by the positive economic climate of that period and work-force shortages in specific sectors (agriculture, manufacture, construction).

<sup>14</sup>The second and third largest groups of third-country nationals living in Greece originate from Georgia (18,865) and Ukraine (18,447).

<sup>15</sup>Out of 516,300 immigrants in Greece in 2017, only 85,400 were EU citizens with the largest groups being Bulgarians (29,800) and Romanians (16,900).

<sup>16</sup>427,000 Greeks emigrated during 2008–2016 according to available data. Most of them were university graduates who moved mainly to Germany and the UK.

population with intensely different cultural profile and low skills level, making integration much more challenging (Ministry of Migration Policy 2018:15).

In 2010, the Government decided to establish for the first time a coherent migration and asylum management system and promote migrants' long-term integration. Flagship initiatives of this process included the setup of the Asylum Service and the Reception & Identification Service in 2011, the adoption of the Code of Immigration and Social Integration<sup>17</sup>, the reform of the Code of Hellenic Citizenship<sup>18</sup> and the simplification of the framework on the residence status of EU citizens, as regulated by the Presidential Decree (P.D.) No. 106/2007<sup>19</sup>.

Despite the good intentions of policy makers, the effective implementation of this reform remains a difficult equation to solve during an era of heavy fiscal constraints. In this context, the Ministry of Migration Policy announced a new national strategy for immigrant integration (Ministry of Migration Policy 2018), which was approved by the Governmental Council of Social Policy in July 2018.

### 13.3 Migration and Social Protection in Greece

Article 1 of Law No. 4387/2016 recognizes the general right to social benefits for Greek citizens and foreigners legally and permanently residing in Greece. Also, the Code of Immigration and Integration makes clear that legally residing non-EU immigrants have the same rights as nationals in social insurance, whereas single residence permit holders are entitled to equal treatment with nationals regarding their access to social security schemes<sup>20</sup>. The general right to equal treatment with nationals is also recognized to EU nationals and their family members residing in Greece (P.D. 106/2007).

However, eligibility conditions for social benefits differ according to the type of the benefit thus potentially having a different impact on the ability of national residents, non-national residents and non-resident nationals to enjoy them. Access to social welfare benefits (non-contributory), subject to subsidiarity and needs assessment principles, may also depend on prior residence requirements. Access to social insurance benefits (contributory) requires affiliation to the National Social Insurance System and fulfillment of insurance conditions, whereas nationality and duration of prior residence in Greece are irrelevant as a rule.

<sup>17</sup> Law No. 4251/2014 (OJ Vol. A' 80/1.6.2014) regulates all issues regarding the entrance and residence of third-country nationals in Greece and transposes Directives 2011/98/EU and 2009/50/EU. It was amended by Law No. 4332/2015 (OJ Vol. A' 76/9.7.2015).

<sup>18</sup> Amended by Laws No. 3838/2010, 4332/2015 and 4531/2018.

<sup>19</sup> This P.D. (OJ Vol. A' 135/21.6.2007) regulates the entrance and residence of EU nationals and their family members, transposing Directive 2004/38/EC. It was amended by Laws No. 4071/2012 and No. 4540/2018.

<sup>20</sup> Social security is defined here with specific reference to Regulation (EC) 883/2004.

### ***13.3.1 Unemployment***

Coverage against the risk of unemployment is provided to employees by OAED<sup>21</sup> through the compulsory and contributory social insurance scheme granting earnings related allowance and health care coverage<sup>22</sup>. Unemployment benefits are granted to individuals who have lost their job unintentionally and remain capable and willing to work and available for work. The qualifying insurance period corresponds to either 125 insured work days during the 14 months preceding job loss or 200 insured work days during the 24 months preceding job loss, while the two last months before job loss are not included in the reference period. Since 2014, access to the benefit also requires that the claimant has not exceeded a maximum duration of benefit payment set at 400 days in 4 years.

Claimants must register in the Job Seekers Registry and submit an application with supporting documents, including proof of a fixed domicile and bank details (regardless nationality of the claimant) and residence documents for foreign claimants<sup>23</sup>. The basic monthly payment corresponds to 400 Euros and is complemented by an increment of 10% for each dependent family member. The payment can go on for a maximum of 12 months, unless the beneficiary has exceeded the ceiling of 400 days of benefit in 4 years.

The benefit is revoked if the beneficiary refuses to accept suitable jobs or training opportunities offered by public employment services or leaves the country permanently (which implies unavailability for work).

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<sup>21</sup> OAED is both unemployment insurance fund and public employment service.

<sup>22</sup> The scheme is regulated by a complex legislative and regulatory framework including Legislative Decree No. 2961/1954 (OJ Vol. A' 197/25.8.1954), Law No. 1545/1985 (OJ Vol. A' 91/20.5.1985), Law No. 1892/1990 (OJ Vol. A'101/31.7.1990), Law No. 3996/2011 (OJ Vol. A'170/5.8.2011), Joint Ministerial Decision No. 3800/359/1.3.2012 (OJ Vol. B' No. 565/2.3.2012) and implementing OAED Executive Board Decisions No. 3701/55/22.11.2011 and No. 792/20/20.3.2018.

<sup>23</sup> For all transactions with public authorities, non-nationals are required to demonstrate residence related documents. For EU nationals, this includes the EU citizen registration certificate or the EU citizen permanent residence card. For non-EU nationals, a valid residence card is required or a certificate of submission of an application for residence card renewal.

### 13.3.2 Health Care

Coverage against the risk of sickness is provided through the compulsory and contributory health insurance scheme, managed by EOPYY for health benefits in kind<sup>24</sup> and by EFKA for sickness cash benefits<sup>25</sup>. Under special programmes voluntary insurance for health care is possible for Greek citizens or Greek emigrants living abroad.

Access to benefits in kind is granted both to directly insured persons and their dependent family members, provided that 75 insured work days are completed over the preceding year or over the 12 first months of the last 15 months preceding illness. Claiming the benefits requires demonstration of the EFKA Health Booklet (the procedure is soon expected to be simplified by the sole reference to the claimant's social security number – AMKA).

The main issue of controversy regarding foreigners' health care insurance concerns the treatment of their family members. For third-country nationals, only their spouse and children are considered as dependent family members (Law No. 4251/2014), provided they reside legally and permanently in Greece. For EU nationals, although the category of qualifying persons is much broader, access to health care for dependent family members requires that they are permanent residence card holders (this specific residence card is issued after 5 years of residence in Greece). These differentiations can hardly reconcile with the principle of equal treatment regarding access to contributory social insurance benefits, as proclaimed by Laws 4387/2016 and 4251/2014 and EU Directives 2000/43/EC and 2011/98/EU.

The earnings-related sickness cash benefit is provided by EFKA to the directly insured. The benefit aims at compensating loss of employment income due to the temporary incapacity for work caused by illness. For employees, access to the benefit for minimum duration of payment (182 days) requires certified work incapacity and completion of at least 120 insured work days over the year preceding illness or over the 12 first months of the 15 months period preceding illness. The duration of payment depends on completed insurance periods with a maximum of 720 days for the same illness.

The risk of invalidity is mainly covered through the compulsory and contributory pension scheme of EFKA<sup>26</sup>. The current legislation<sup>27</sup> defines invalidity as a condition resulting from illness or physical or mental disability, which appeared or worsened after insurance affiliation and affects the ability of the insured to earn normal

<sup>24</sup> Scheme regulated by Laws No. 3918/2011 (OJ Vol. A'31/2.3.2011), No. 4238/2014 (OJ Vol. A'38/17.2.2014), No. 4486/2017 (OJ Vol. A' 115/7.8.2017) and No. 4529/2018 (OJ Vol. A'56/23.3.2018) and Joint Ministerial Decision No. ΕΑΔΕ/Γ.Π.80157/31.10.2018 (OJ Vol. B'4898/1.11.2018).

<sup>25</sup> Law No. 4387/2016.

<sup>26</sup> Law No. 4387/2016.

<sup>27</sup> The scheme for employees is the most generalized one, regulated by Statutory Law No. 1846/1951, Law No. 2084/1992 (OJ Vol. A' 165/7.10.1992) and Law No. 4387/2016.

yearly earnings. There are three degrees of insurance invalidity, severe (over 80%), moderate (67% – 79,99%) and partial (50% – 66,9%). Just like old age pension, invalidity pension includes a contributory and a non-contributory component. The crucial difference here is that prior residence is not taken into account for the calculation of the non-contributory component of invalidity pension.

Access to the contributory component (Contributory Pension) requires certified<sup>28</sup> invalidity over 50% and the completion of 15 years of insurance. The contributory pension is calculated according to pensionable earnings and duration of affiliation, but access to the full amount requires severe invalidity as a rule.

The non-contributory component (National Pension) is flat-rate and financed by the state budget. Access to the full amount (384 Euros) requires the completion of at least 20 years of insurance.

### 13.3.3 *Pensions*

The risk of old age is covered through the compulsory and contributory pension scheme of EFKA<sup>29</sup>. Voluntary insurance for pension is also possible for Greek citizens or Greek emigrants living abroad<sup>30</sup>.

Since the 1990s, the old-age pension reform has been attracting the strong interest of political elites and stakeholders because sustainability and adequacy of pension benefits represent a key challenge for the rudimentary Greek social security model in the context of demographic ageing and high financial imbalances (Amitsis 2017b). Therefore, it comes as no surprise that the Greek Parliament has adopted at least ten major pension statutes so far<sup>31</sup>. The age conditions were tightened after the 2013 and 2015 reforms<sup>32</sup>, whereas the scope of the benefit was reshaped in 2016 through the introduction of a non-contributory component.

The contributory component (Contributory Pension) is financed by contributions of employers and employees; it is calculated according to previous pensionable earnings and pensionable years. The general conditions to receive the full contributory pension include attainment of 62 years of age with 40 years of insurance or

<sup>28</sup> Invalidity certification and assessment tasks are performed by specialized public agencies (*Invalidity Certification Centers – KEPAs*).

<sup>29</sup> The scheme is regulated by a complex institutional framework. See article 2 of Law No. 4336/2015 (OJ 111/3.8.1984) on age and insurance conditions and articles 2, 7, 8 and 28 of Law No. 4387/2016 on residence requirements, features and calculation of the benefits.

<sup>30</sup> See articles 1–4 of Law 1469/1984 (OJ Vol. A' 111/3.8.1984).

<sup>31</sup> See Laws No. 1902/1990, No. 2084/1992, No. 3029/2002, No. 3232/2004, No. 3385/2005, No. 3518/2006, No. 3655/2008, No. 3863/2010, No. 3986/2011, No. 3996/2011, No. 4093/2012, No. 4111/2013, No. 4316/2014, No. 4334/2015, No. 4336/2015, No. 4387/2016, No. 4393/2016 and No. 4472/2017.

<sup>32</sup> According to Law No. 4336/2015, the general uniform age limits for drawing standard full pension are applicable from 1.1.2022 with few exceptions. In the meantime, age limits are being gradually increased to reach the uniform new limits by 31.12.2021.

67 years of age with 15 years of insurance. A reduced contributory pension can be claimed at the age of 62 with 15 years of insurance.

The non-contributory component (National Pension) is flat-rate and financed by the state budget. Access to the national pension requires prior establishment of the right to the contributory pension and prior legal and permanent residence in Greece for at least 15 years (from age of 15 until retirement age). Drawing the full national pension (384 Euros) requires an established right to a full contributory pension, at least 20 years of insurance and 40 years of legal and permanent residence in the country.

As a corollary of the contributory pension, the national pension is considered to be absorbed by the former (main benefit) and, therefore, to have the same legal nature (social insurance benefit). Given that the national pension is not means tested and remains strongly linked to previous contribution, it does not correspond to the status of a special non-contributory cash benefit in the sense of article 70 of Regulation (EC) 883/2004 (Amitsis 2017b), nor should it be confused with public non-contributory pension schemes (Stergiou 2017:759)<sup>33</sup>.

Once the claim for the contributory pension is granted, EFKA proceeds with the examination of conditions required for the national pension. Regarding the prior residence condition, the legality of residence for non-EU nationals is proved by a certificate of legal residence issued by the same immigration authority which had issued the last residence card. The examination of the permanent character of residence is more complex and concerns both immigrants and Greek citizens who have spent part of their lives abroad. Competent authorities have issued guidelines<sup>34</sup> according to which affiliation period to EFKA is not indisputable proof of permanent residence and supplementary evidence<sup>35</sup> should be required. The guidelines also point out that residence periods in another EU country or a country which has signed a bilateral social security agreement (BSSA) with Greece, are aggregated with the residence periods in Greece for access to national pension, whereas the calculation of the benefit follows the principle of apportionment.

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<sup>33</sup> As A. Stergiou points out:

The introduction of the national pension has not changed the philosophy of the system by turning it into some kind of Beveridge-type system. It has only infused elements of social security in its dominant Bismarckian rationale. The differentiating element is the requirement of a residence period in Greece, in addition to the requirement of an insurance (employment) period. It is evident that employment usually identifies with residence. Therefore, someone having the minimum years of insurance/employment period (at least 15) must prove a long and legal stay (40 years) in Greece in order to enjoy the full amount of national pension (national solidarity). Social solidarity indirectly but clearly acquires "national borders". The right to national pension is recognized to immigrants, only when they have integrated into the structures of society, this proved by their long and legal residence in the country.

<sup>34</sup> Guidance No. 60000/18191/976/19.9.2017 issued by the Ministry of Labour, Social Insurance & Social Solidarity and EFKA Circular No. 10/7.3.2018.

<sup>35</sup> Such as residence related documents for non-nationals, tax record in Greece, insurance and residence periods in other countries, municipal certificates of permanent residence, rent contracts, utility bills etc.

### 13.3.4 Family Benefits

Directly insured women employees are compensated for the loss of employment income during the legally provided maternity leave through the Maternity Benefit (known also as Pregnancy & Postpartum Benefit). This is a contributory social insurance benefit granted by EFKA to claimants, who have completed 200 insured working days during the last 2 years<sup>36</sup> and stay off work for the overall duration of the benefit payment (56 days before due date of child birth and 63 days after). The amount corresponds to 50% of the standard wage of the claimant's insurance contribution class. Once the compulsory maternity leave is over, beneficiaries who have received the Maternity Benefit are automatically entitled to the Supplementary Maternity Allowance granted by OAED. This is a non-contributory social insurance benefit that equals the difference between the Maternity Benefit and the beneficiary's actual wage.

Women employees who have received the Maternity Benefit and have a valid employment contract can also benefit from the Special Maternity Protection Leave and Allowance Programme<sup>37</sup> managed by OAED. This is a non-compulsory additional maternity leave of 6 months with financial compensation equal to the statutory minimum wage (non-contributory).

Protection to families with dependent children is provided through the Child Benefit<sup>38</sup>, a non-contributory means-tested allowance financed by the state budget and granted by OPEKA. The Child Benefit belongs to the category of *demogrants*, corresponding rather to a composite social security benefit than a genuine social welfare one.

Access to the benefit requires that the family has dependent children, that a tax declaration has been submitted prior to the claim and that the equivalent family income does not exceed the legally defined thresholds. There are some residence requirements for both the claimant parent and the child, including prior legal and permanent residence in Greece for 5 years before the claim<sup>39</sup> and legal and permanent residence in Greece at the time of the claim and during benefit payment<sup>40</sup>. The

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<sup>36</sup> Article 34 and 39 of Statutory Law No. 1846/1951.

<sup>37</sup> Article 142 of Law No. 3655/2008.

<sup>38</sup> Article 214 of Law No. 4512/2018 (OJ Vol. A' 5/17.1.2018), Joint Ministerial Decision No. Δ12/Γ.Π.οικ.2738/36/17.1.2018 (OJ Vol. B' No. 57/18.1.2018) as amended and Joint Ministerial Decision No. Δ11/οικ.19750/540/30.3.2018 (OJ Vol. B' No. 1293/12.4.2018).

<sup>39</sup> According to Law No. 4512/2018, 5 years prior residence is required for parents and legal and permanent residence (with no specified time limit) for the child. In administrative practice (Joint Ministerial Decision No Δ11/οικ.65072/2920 of 10.12.2018), the verification of 5 years residence requirement is performed both for parents and children (unless younger than 5 so residence time counts since birth) through previous tax returns of the family.

<sup>40</sup> Absence from Greece for more than 3 months leads to benefit suspension, whereas if the family or the child moves abroad permanently the benefit is revoked. An indefinite absence abroad without benefit suspension is allowed in case the reason for staying abroad relates to studies, hospitalization or work for an employer established in Greece.

paid amount depends on the equivalent income category of the claimant and the number of dependent children ranging from 28 Euros (for income of 10,000–15,000 Euros) to 70 Euros (for income up to 6000 Euros) per child.

### ***13.3.5 Guaranteed Minimum Resources***

The national GMIS corresponds to the Social Solidarity Income Program (KEA)<sup>41</sup>, a social welfare programme, centrally managed and state financed, providing non-contributory and means-tested benefits to people living in extreme poverty (Amitsis 2017a). The scheme is structured in three pillars, including income support, activation services and access to supplementary welfare services and benefits in kind<sup>42</sup>.

The benefit is addressed to recipient units, either to a household or a homeless person (registered as such by the municipal social services) who fulfill the following requirements<sup>43</sup>:

- Members of the household must legally and permanently reside in Greece.
- The declared income of the recipient unit during the 6 months preceding claim must not exceed six times the guaranteed amount for each type of household.
- The assets of the household must not exceed the legal thresholds.

The maximum duration of coverage by the KEA Programme is 6 months and, if need continues, a new application may be submitted with full reassessment. For households with no other source of income the cash benefit corresponds to the guaranteed amount<sup>44</sup>, otherwise the benefit equals the difference between the household's income and the guaranteed amount.

### ***13.3.6 A Critical Discussion of Key Factors on the Access of Migrants to Social Benefits***

The analysis of the Greek institutional framework and administrative practice clearly leads to the conclusion that Greek citizens and foreigners legally residing in Greece may access social benefits on equal terms since eligibility criteria are not based on nationality. The basic migrant-related requirement corresponds to the

<sup>41</sup> See article 235 of Law No. 4389/2016 as amended and Joint Ministerial Decision Δ13/οικ/33475/1935/15.6.2018 (OJ Vol. B' No. 2281/15.6.2018).

<sup>42</sup> Due to the underdeveloped social care system, the service provision aspect of the scheme remains extremely weak in practice.

<sup>43</sup> Article 235 par. 6 of Law No. 4389/2016 and article 3 of Joint Ministerial Decision Δ13/οικ/33475/1935/15.6.2018.

<sup>44</sup> 200 Euros for a single person plus 100 Euros for each extra adult member and 50 Euros for each dependent child up to a maximum of 900 Euros per household.

existence of valid residence permits. As for prior residence requirements, they are introduced when justified by the non-contributory and social solidarity character of the benefit concerned and are equally implemented for Greeks living abroad. The only special attention attributed to the latter corresponds to their right to affiliate with the Greek social insurance system on a voluntary basis for pension and health insurance in an effort to encourage repatriation.

However, a key issue about the interrelation between migration and social protection concerns how the insufficiency of financial resources implied by the recourse to the GMIS might affect residence status, family reunification rights or naturalization potential of migrants.

For non-EU nationals, inadequacy of resources may lead to the revocation or non-renewal of residence permit (articles 4 par. 2 and 24 par. 1 of Law No. 4251/2014). For EU Blue Cards holders, insufficiency of resources and recourse to the national social welfare system directly entails revocation or not renewal of residence permit (article 116 par. 3 of Law No. 4251/2014). Also, non-EU nationals can only exercise the fundamental right to family reunification when they prove sufficiency of resources without dependence on the national social assistance system (article 70 par. 2 point b No. 4251/2014).

The residence status of EU nationals without permanent residence card can also be affected since sufficiency of resources without recourse to the national welfare system is a basic condition for their right to reside in Greece and receive a permanent residence card (articles 7 par. 1 and 13 par. 1 of Presidential Decree No. 106/2007).

Naturalisation prospects may also be affected by the claim or the receipt of KEA, as one of the main criteria for granting Hellenic citizenship to foreigners is the degree of their socio-economic integration, while their financial status is legally defined as an important indicator (article 5A of the Citizenship Code). Thus, what may affect the naturalization process is not the act of claiming or receiving KEA per se, but the poor financial condition implied.

Finally, regarding the application of beneficial transnational coordination rules, it is evident that EU social security legislation is in full implementation in Greece and, thus, access to rights is facilitated for all EU and non-EU citizens residing in Greece and falling under their scope, as well as Greeks living in other EU countries.

Bilateral social security agreements have similar beneficial results in the field of pensions, where the principles of equal treatment, maintenance of acquired insurance rights, aggregation of insurance periods, apportionment of insurance benefits and export of cash benefits are applied for all persons insured in Greece and the other contracting party regardless nationality. Greece has signed “classic” BSSAs with eight non-EU countries, including USA<sup>45</sup>, Australia<sup>46</sup> and Canada<sup>47</sup>, which

<sup>45</sup> Ratified by Law No. 2186/1994 (OJ Vol. A' No. 15), covering old age pension, invalidity pension and survivors' benefits.

<sup>46</sup> Ratified by Law No. 3677/2008 (OJ Vol. A' No. 140), covering only old age pensions.

<sup>47</sup> Ratified by Law No. 2492/1997 (OJ Vol. A' No. 83), covering old age pension, invalidity pension and survivors' benefits. Greece has also signed a separate classic type BSSA with Quebec.

represent the three largest destinations of Greek emigrants<sup>48</sup>. There is no BSSA, though, signed with the countries whose nationals represent the three largest groups of non-EU foreigners in Greece (Albania, Georgia and Ukraine).

### 13.4 Conclusions

It is expected that Greece will not be affected by high rates of EU migrant workers and jobseekers in the forthcoming years, given that the economic and financial situation bring into question the main reasons for moving in Greece (OECD & European Commission 2014): earn enough to have a higher purchasing power at home; achieved previously set goals, such as savings or completing education; having higher chances of employment at home, etc. But the situation would be rather different for retired EU movers (Fries-Tersch et al 2016) and third country nationals, who might be *de jure* and *de facto* influenced by policy decisions concerning their access to the Greek social protection model.

This chapter has applied both institutional analysis and bibliographical research in order to assess whether, during a sharp financial crisis, Greece respects the fundamental principles of free movement and equal treatment for EU citizens (Poptcheva 2014), and the solidarity discourse in favour of third-country nationals (Guild and Carrera 2013). It concludes that affiliation with social insurance schemes is directly linked to the degree of integration into the labour market, while access to social welfare depends on the development of a controversial (for Greek citizens) but generous (for third-country nationals) public assistance regime.

Last but not least, although prior residence requirements are applied equally regardless nationality, it is clear that Greeks who have lived a part of their lives abroad as well as immigrants may have a greater difficulty in fulfilling them. On the other hand, access of foreigners to income support benefits may be discouraged since, in certain cases, the implied inadequacy of resources affects their residence status or naturalisation prospects.

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<sup>48</sup>Greece has also signed classic BSSAs with Argentina, Venezuela, Brazil, New Zealand and Uruguay.

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# Chapter 14

## Migrants’ Access to Social Protection in Hungary



Gábor Juhász

### 14.1 Overview of the Welfare System and Main Migration Features in Hungary

#### 14.1.1 *Main Characteristics of the National Social Security System*

‘Traditional’ categorisations of welfare states have limited application to the analysis of the Hungarian welfare system. Due to the country’s turbulent social and economic history, various ideas and practices influenced the process of welfare state building in Hungary. Each of the different approaches has left some imprints on the social welfare system, the reason for which some scholars have emphasised the “hybrid” character of the Hungarian welfare state (Tausz 2009, 259.)

Welfare state building in Hungary can be divided into three periods, each of them with different features in ideological terms. At the end of the nineteenth century, Germany’s social reforms inspired to develop social insurance schemes in Hungary. The communist coup d’état at the end of WWII did not interrupt this development since the Bismarckian model of social insurance proved to be suitable for the communists to reward preferential groups (especially agricultural workers entering cooperatives) by the extension of the benefits to them. It was also easy to use this model for punishing those preserving their economic independence (smallholders, artisans, etc.), as they were simply excluded from the system. The anti-communist revolt in 1956 forced the communist party to change its social policy leading to some Scandinavian-style reforms in the social insurance system. The economic and political transformation in the 1990s has led to (neo)liberal reforms in some social

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policy sectors (partial privatisation of pensions and health care and strict implementation of less eligibility in social assistance).

The central pillar of the Hungarian social security system is social insurance, which accounts for 84% of social security expenditure.<sup>1</sup> Social insurance has two branches: pension and health insurance. Employers' and employees' contributions finance both schemes on a pay-as-you-go basis, and the central budget finances incidental deficits of them. Cash benefits in both schemes are income related. The unemployment benefit scheme covers unemployed and self-employed, being financed from contributions and providing maximised earnings-related benefits. The second pillar is the rather extensive family benefit scheme. Family benefits are universal and account for 11,9% of the social security budget.<sup>2</sup> On the other hand, instead of guaranteeing minimum income, Hungary developed a fragmented social assistance system providing scarce aid to some categories of people.

#### ***14.1.2 Migration History and Key Policy Developments***

In the middle ages, Hungarian kings settled German and Italian artisans and wine-growers in their kingdom. However, a vast population movement started with the Ottoman invasion that almost entirely depopulated the middle part of Hungary by the end of the seventeenth century, and the re-population of the territory required organised migration. The first well-documented migration flow in Hungarian history happened at the turn of the twentieth century when almost 1,3 million people left the Hungarian Kingdom to the United States (Puskás 1982). After the First World War, Austria, Czechoslovakia and the Serbian-Croatian-Slovenian Kingdom annexed two-thirds of the territory of the Hungarian Kingdom resulting in 350,000 ethnic Hungarians migrating to Hungary from the successor states between 1918 and 1924. With the end of the Second World War, population movements started again. The Hungarian government forced 185,000 ethnic Germans to move to Germany and while providing shelter for 376,000 ethnic Hungarians fleeing from Czechoslovakia, Romania and Yugoslavia (Romics 2005). From 1949 to 1956, 'migratory movements were officially restricted, although thousands of Hungarians crossed the heavily militarised Austrian border illegally' (Gödri et al. 2014, p. 9). The Austrian border opened in the autumn of 1956 for 3 months, inspiring 176,000 Hungarian citizens to leave in the USA, Canada, Australia, Austria and other Western European countries (*ibid*).

In the late 1980s, thousands of ethnic Hungarians moved from Romania to Hungary, and some years later, migration flows started from Ukraine and Yugoslavia.

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<sup>1</sup>Own calculation. In 2016, the total expenditure on social protection was €21,252 of which €17,929 was spent on sickness, healthcare, old age, survivors and disability benefits and services. Source: Eurostat database, Net social benefits by function: <https://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00083&language=en>

<sup>2</sup>Eurostat Data Explorer. <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

As a result of historical experience and the accession to human rights conventions, migration regulation has developed in two ways in Hungary. New legislation simplified the naturalisation of Hungarians living outside Hungary's borders and adapted the treatment of political refugees to international standards. The legislation was less generous with economic migrants as they had to meet special conditions to obtain permits to get settled and work. Despite this, Hungary became attractive to immigrants from China and Middle Eastern countries who have set up business in retail and service industries (Gödri et al., p. 12).

Hungary's accession to the European Union (EU) in 2004 gave new impetus for emigration. Hungary's migration balance is currently negative as the number of Hungarians emigrants is three times higher than the number of foreigners residing in Hungary.<sup>3</sup> According to Eurostat,<sup>4</sup> 325,000 Hungarian nationals reside in other European countries, while the Hungarian Statistical Office<sup>5</sup> accounts that 93,000 foreigners reside in Hungary.

Nevertheless, the issue of migration has not been on the political agenda in Hungary until quite recently. The policy turn was a reaction to the quadrupling of asylum seekers from Asia and Africa in 2015. In 2014, 42,777 registered asylum seekers entered Hungary, whereas, in 2015, this number increased to 177,135 (Juhász et al. 2017 p. 9). By the end of August 2015, the Hungarian government closed the southern border of the country and tightened the conditions for submitting an asylum application. At the end of 2015, the government closed the country's largest refugee camp in Debrecen, while also stopping integration support for refugees. Since 2016, application for asylum can be submitted only in Röszke and a particular zone nearby, exclusively in office hours when only a minimal number of cases may be dealt with (Juhász, Molnár, Zgut).

Against this general background, one can initially expect that the Hungarian social security system is not particularly inclusive towards foreigners, particularly those originating from non-EU countries. This chapter aims to test this hypothesis by identifying a series of factors that could constrain migrants' access to social benefits.

## 14.2 Migration and Social Protection in Hungary

The main pillars of the Hungarian social security system were built in the communist era when inward and outward migration was rather moderate. The (forced) full employment made it possible to deal with all social risks associated with the decline and loss of ability to work (old age, widowhood, orphanhood, disability, maternity, etc.) in the framework of the comprehensive and monolithic social insurance

<sup>3</sup> Eurostat news release 87/2018.

<sup>4</sup> Eurostat.

<sup>5</sup> STADAT – 1.7, 2018.

scheme. Due to the isolationist state policy, the provisions determining the personal scope of the Act on Social Insurance did not address the issue of nationality, as it was so obvious that the law applied only to ‘persons and their relatives being involved in building the socialist society’.<sup>6</sup> The builders of the socialist society could have been only national citizens. Although increasing migration associated with economic and political transformations did not put significant pressure on the social security system in the 1990s, there have always been signs of welfare chauvinism in Hungarian politics (Mewes and Maus 2012). The fall of the Iron Curtain and Hungary’s opening to the world in the 1990s provoked new fears of sharing the benefits that the ‘premature welfare state’ (Kornai 1997) was able to provide for newcomers from less developed countries in Hungary’s neighbourhood.

Aiming to prevent migrants from the neighbouring countries from accessing the Hungarian labour market and the social security system was the reason for which Hungary has still not ratified Article 18 and 19 the European Social Charter. The access of Romanian citizens to the Hungarian social benefits came to the agenda in a referendum in 2004 where the majority of voters rejected the idea of granting Hungarian citizenship even to ethnic Hungarians living in the neighbouring countries. Despite these concerns, legal regulations are generally not restricting migrants’ access to social security benefits. It is a result of the massive dominance of contributory benefits which, in combination with reduced-value unemployment and family benefits and the underdeveloped social assistance scheme which disfavors the ‘undeserving’ poor guarantees that mainly working migrants (and their dependent relatives) had access to social security benefits.

In general, the Hungarian social security legislation does not differentiate between nationals and foreigners. Entitlement to the most benefits depends on individuals’ contribution record. However, the employment of foreign nationals - a precondition for becoming a member of the Hungarian social insurance - is subject to various restrictions concerning residence and work permits. Family benefits are an exception from the general rule, as they are conditional on claimants’ actual stay in Hungary. Hungary does not provide guaranteed minimum resources which negatively affects both domestic and foreign citizens. The subjects of social assistance are Hungarian citizens, and foreigners have access to benefits if they hold a special legal status residing in Hungary.

### **14.2.1 Unemployment**

The unemployment benefit scheme was introduced in Hungary as a reaction to the political and economic transformation during the early 1990s. The scheme is regulated by Act 4 of 1991. Participation in the unemployment scheme and the payment

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<sup>6</sup>According to Article 1 of Act 2 of 1975 on Social insurance the purpose of the Act was ‘to regulate and further develop, in accordance with uniform principles, the financial contributions of persons and relatives involved in the building of socialist society.’

of contributions during economically active periods is mandatory for employees and self-employed (Juhász 2007). Although the scheme is not conditional on citizenship nor it requires a specific period of prior residence in Hungary, its compulsory character can be particularly problematic for non-EU citizens whose economic activity (employment) is subject to work permits or holding a special status while residing in Hungary. It is also important to note that Hungary refused to ratify Article 18 of the Revised Social Charter what declares the right of citizens of the Parties to engage in a gainful occupation in the territory of other Parties. Thus, Hungary does not have an obligation to liberalise regulations governing the employment of foreign workers. However, third-country nationals who hold a work permit are to receive the same treatment in the labour market and social security as resident nationals.

Claimants of unemployment benefits have to register with the National Employment Service (NES) and prove at least 12 months of contributions. The amount of benefit is 60 per cent of the recipient's previous wage, without exceeding the national minimum wage. The benefit is granted for a maximum of 12 weeks and recipients are obliged to cooperate with the NES and be available for work (failing to do so can be sanctioned with the revocation of the benefit). Such rules make it very difficult for beneficiaries to take this benefit abroad, although exporting is not explicitly prohibited by law. The same regulations practically prevent non-resident Hungarians from claiming the benefit from Hungary.

There is no specific unemployment assistance scheme in the country. However, unemployed people who are not entitled to the unemployment benefit can claim the so-called Benefit for Persons in Active Age (BPAA). This means-tested benefit is available to those who have exhausted the unemployment benefit or do not have the required period of prior contribution to claim the unemployment benefit. The entitlement to BPAA is not conditional on social insurance records although claimants are required to cooperate with the NES for a year preceding the submission of their claim. Claimants have to register as job seekers, cooperate with the NES and the local governments in searching for a job, or participate in public work programmes. Failing to do so can lead to the revocation of the benefit. BPAA is a flat-rate benefit determined as 80% of the minimum pension. The benefit is conditional on the beneficiary's stay in Hungary; hence non-resident Hungarians are not entitled to BPAA.

Foreigners have reduced access to BPAA. EU citizens who do not exhaust the unemployment benefit are hardly able to complete the requirement for cooperation with the authorities for a year preceding the submission of their claim. As to non-EU citizens, when they meet the eligibility criteria, their resident permit may be revoked on the basis that they do not have enough means for their livelihood in Hungary. Bilateral social security agreements with the countries whose nationals represent the three largest groups of non-EU citizens residing in Hungary (Ukraine, Serbia and China) or the countries that represent the most frequent destinations for Hungarians abroad (USA, Canada, Australia) do not cover unemployment benefits nor social assistance.

### 14.2.2 *Health Care*

When the Hungarian Parliament redesigned the social security system in the 1990s, it linked the use of health services to contribution payments (Juhász 2007). However, certain groups of individuals are granted health insurance without having to pay contributions (children below the age of 18, pensioners, beneficiaries of parental benefits, and registered unemployed). Health insurance covers all employees and self-employed. There is no qualifying period of prior contribution for accessing in-kind benefits. Health insurance typically covers the full costs of medical treatment. Patients do not have to pay charges for hospital treatment, whereas pharmaceutical costs are partially covered. Health expenditure is financed from social contribution tax (paid by employers) and health insurance contribution (which is deducted from employees' gross income). Social contribution tax is 19,5% of salaries and wages, including undefined contributions to the pension, health and labour insurance schemes. Health insurance contribution is 8,5% of salaries and wages (4% for benefits in kind, 3% for cash benefits and 1,5% for labour insurance).

Individuals legally residing in Hungary are entitled to voluntarily join the health insurance regardless of their nationality, although special rules apply for their contribution rate. Voluntarily joining health insurance is conditional on making a contract with the National Health Insurance Fund, and on paying contributions to the Fund that equal at least 50% of the minimum wage per month. In exchange, they get access only to emergency care for the first 2 years of their contract. To take full advantage of health care services, they have to pay for 24 months in advance. Unless having an employment relationship with a Hungarian employer or a contract with the National Health Insurance Fund, national citizens staying abroad are not entitled to publicly financed health care. The same rules are to apply to foreigners residing in Hungary.

Sickness cash benefit covers all employees and self-employed, although it is impossible to join this scheme voluntarily. Entitlement to sickness benefit is conditional on contribution payment, but not on a prior residence in the country. Sickness benefit can be granted for a maximum 12 months, and it is income-related (set at 60% of the beneficiaries' previous income, without exceeding the double of the minimum wage). Employers are obliged to pay a wage for 15 days of sick leave in a year, and the provision of sickness benefit starts after that. Employers are also required to finance a third of the benefit paid to their employees. Sickness benefit is not exportable. There is no distinction on the grounds of nationality between claimants, but non-EU foreigners face more difficulties to get entitled to this benefit because they are required to present work and residence permits for taking a job in Hungary.

In the early 2010s, the legislation transformed disability pension for those below the retirement age into a special kind of health benefit (Benefit for Persons with Changed Work Capacity). Those in retirement age could claim for old-age pension, while others could claim for rehabilitation benefit or disability benefit financed by the Health Insurance Fund (Szíkra 2018). Benefits for people with reduced work

capacity cover both employees and self-employed. There is a qualifying period of at least 1095 days of prior insurance within the last 5 years, 2555 days within the last 10 years, or 3650 days within the last 15 years. Claimants cannot perform gainful activities nor receive any regular cash benefits. Eligibility for the benefits is not conditional on a prior residence in Hungary.

Persons whose work capacity may improve with standard rehabilitation are eligible for the Rehabilitation Benefit covering 35% of the claimant's previous average monthly income, with an upper limit of 40% of the national minimum wage. Persons who need permanent rehabilitation are eligible for an increased amount of 45% of their average monthly income with an upper limit of 50% of the national minimum wage. Uninhabitable people are entitled to claim a disability benefit.

Rehabilitation and disability benefits are exportable, although when beneficiaries do not appear before the committee of medical experts which assesses their health status, they can lose the benefit. Hungarian citizens who reside abroad may thus have difficulties regarding their access to these benefits. On the other hand, EU and non-EU foreign residents have equal access to these benefits as national residents.

The Hungarian – Soviet agreement that applies to Ukraine guarantees equal treatment for accessing invalidity benefits to Ukrainian nationals residing in Hungary while ensuring that the contribution records collected in Ukraine are taken into account when Hungarian invalidity benefits are concerned. The agreement with Serbia also stipulates equal treatment of Serbian nationals with Hungarian citizens regarding the regulations applied for persons with changed work capacity and allows for the aggregation of contribution periods. In the absence of security agreement between Hungary and China, the general rules of the Hungarian legislation shall be implemented for Chinese nationals staying in Hungary. Moreover, there is no agreement signed with countries being the leading destination of Hungarians abroad (USA, Canada and Australia). However, insurance-based disability benefits may be exported in the same way as old-age pensions.

### ***14.2.3 Pensions***

Hungary has a two-pillar pension system with a pay-as-you-go state pension scheme in its frontline. The second pillar consists of voluntary private pension funds in which participation is influenced mainly by tax allowances. As a third pillar, a mandatory private pension scheme operated in the country between 1998 and 2011 and the number of private pensions fund members reached 3.1 million of which 60.000 thousand people have kept their membership by 2014 (Szikra 2009; Szikra and Kiss 2017). One of the severe shortcomings of the pension system is the lack of a 'zero-pillar' that should provide a minimum state pension for those who do not have the contribution record for being entitled to a PAYG state pension. People with poor contribution record may apply for means-tested social assistance.

The contributory pension scheme was set up in 1928. The original fully-funded pension scheme was transformed into a pay-as-you-go one after WWII. Pension

entitlement is conditional on reaching the statutory pension age (increasing gradually until 2022 when it will reach 65) and adequate (15/20 years long) contribution record. The pension scheme covers both employees and the self-employed, and it is not restricted to national citizens. Employees from abroad may establish membership in the state pension scheme, and pension rules do not contain a mandatory residence period in the country. However, the possibility to join the public pension scheme voluntarily is restricted to 'domestic persons'. This category includes Hungarian and citizens of the European Economic Area (EEA), stateless persons, refugees, and those who have settled status in Hungary.<sup>7</sup>

Consequently, Hungarian and EEA citizens who are not staying in Hungary and non-EEA citizens who do not have a special status in Hungary are not allowed to join the pension scheme voluntarily. Another point where foreigners suffer disadvantage is the retrospective payment of pension contributions because the law offers this possibility only to 'domestic persons'. Claiming and exporting pensions from and to abroad is possible.

The amount of the public pension is dependent on claimants' previous earnings calculated over the whole career but not earlier than 1 January 1988. The government determines the amount of the minimum pension, but given its meagre amount it is instead used as a benchmark of income tests in the social assistance system. The social policy agreement between Hungary and the Soviet Union (applicable for Ukraine) offers access to contributory pensions by aggregating the periods of contributions that citizens of the two states completed in each other's countries. Similar rules apply to Serbia. The agreements with the USA and Canada offer equal treatment to citizens of the contracting parties in each other's pension system, and pension benefits are exportable to the contracting party. The agreement with Australia also concerns the old age, survivors' and disability pensions. Hungarian citizens are treated equally with national citizens in Australia, pension benefits are exportable and the creditable periods can be accumulated under the host country legislation.

Hungary does not have a universal old-age non-contributory pension. The task to provide financial support to people who do not meet the eligibility criteria for a contributory public pension is delegated to the social assistance system. Old Age Allowance is a means-tested benefit administered by Regional Government Offices and granted to people in need who are over 65 years of age. Old Age Allowance is a means-tested benefit whose amount depends on claimants' income, family status and age. Their situation is reassessed by the Regional Government Offices periodically in every second year. The payment of the benefit is subject to the beneficiary's

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<sup>7</sup>A settled status may be granted to third-country nationals whose housing and subsistence in Hungary is provided, who are insured for the full range of health care or can provide the cost of healthcare, who has a residence permit or a temporary residence permit, whose settlement is in accordance with the interest of Hungary, and he/she has resided legally and uninterruptedly in Hungary for at least 3 years immediately prior to the submission of the application. The status may also be granted to the spouse and minor child of the aforementioned persons and those who previously had Hungarian citizenship or their ancestor were Hungarian citizens. (Act 2 of 2007, Article 35)

stay in Hungary. Consequently, Hungarian nationals lose their right to this benefit if they decide to move abroad. Since the personal scope of the act applied to Hungarian citizens, immigrants, refugees and stateless persons, non-EU residents without such status cannot claim the benefit. None of the bilateral agreements signed with the main countries of origin of foreigners residing in Hungary or Hungarians residing abroad covers non-contributory pensions or social assistance.

#### **14.2.4 Family Benefits**

Hungary has a comprehensive and complex family support system, including contributory earnings-related and universal benefits (Juhász 2007, Darvas and Szikra 2017). Regarding maternity benefits, during the post-natal period, mothers can choose between two types of cash benefits. If they have at least 365 days of health insurance record within the 2 years preceding childbirth, they can claim for a maternity benefit called Infant Care Allowance (*csecsemőgondozási díj*) for 24 weeks. ICA is an income-related benefit financed from health insurance contributions, and its amount is equivalent to 70% of the mother's previous wage. If the mother does not have sufficient contributions, she can apply for the Child Care Allowance (*gyermekgondozást segítő támogatás*). Access to ICA does not depend on parents' prior residence in Hungary nor the child's birthplace. Voluntary join the scheme is not possible. The personal scope of the Family Support Act applies to Hungarian citizens residing in Hungary. Consequently, Hungarian nationals living abroad can claim maternity benefits only if they decide to move back to Hungary. On the other hand, the legislation does not distinguish between national and foreign residents when it comes to applications for ICA.

The Hungarian social security system does not explicitly provide paternity benefits as such for fathers, although several maternity benefits are open to fathers as well. For example, Infant Care Allowance is available for the father if the mother is dead or unable to care for her baby. Both parents may claim for Child Care Fee and Child Care Allowance, although the recipients of these benefits are typically mothers. As a new labour law initiative, fathers got entitled to 5 days of extra paid leave by the end of the second month after the childbirth. It is not a social security benefit but a labour law measure, and thus, the costs are born by the employer.

Parental benefits (Child Care Allowance or Child Care Fee) generally start when maternity benefit (Infant Care Allowance) comes to an end. Mothers who are not entitled to Infant Care Allowance may apply for Child Care Allowance immediately after giving birth. The law allows the sharing of parental benefits. Child Care Allowance is a universal flat-rate and tax-financed benefit with a maximum duration of 3 years (or 10 years when the child is permanently ill or severely disabled). Entitlement to this benefit is granted to all residents, independently of their nationality. However, unlike national or EU citizens, third-country nationals can apply for it only if they hold an individual status (being officially recognised as settled persons, refugees, stateless persons) or a 6 months long work permit. The law does not

require a specific period of prior residence in Hungary. Child Care Allowance is not exportable: the Regional Government Office may cancel the eligibility for the benefit of recipients stay abroad for more than 3 months.

As for the Child Care Fee, this is a contributory income-related benefit generally granted until the child' second birthday. Entitlement is conditional on the parents' contribution record of at least 1 year taking the last 2 years into account. It is not possible to voluntarily join this scheme. If the eligible person moves abroad and neither he/she nor his/her partner establishes a social insurance relationship in the host country, the benefit is exportable. Hungarian citizens working abroad may be able to claim Child Care Fee when they return to Hungary, provided they comply with the insurance requirement. EU foreigners who reside in Hungary enjoy the protection of EU social security coordination rules, i.e. aggregation of creditable periods collected in EEA countries.

Finally, Hungary also provides for a universal tax-financed Family Benefit for families with children granted until the completion of the child's secondary education. The amount of the benefit depends on the number and health status of the children and parents' marital status. Entitlement to family benefit is not conditional on a prior residence in Hungary, but claimants must reside in the country. It is neither possible to join the scheme voluntarily nor to export it. Non-resident Hungarians regain their eligibility if they decide to return to Hungary. EU foreigners enjoy equal treatment with Hungarian nationals, but the access of non-EU residents to Family Benefit is conditional on their special status in Hungary (refugee, settled or stateless person). Bilateral agreements determine the access of other non-EU foreigners to this benefit. The low number of the bilateral social security agreement in which Hungary is a partner excludes many non-EU foreigners from this benefit. The agreement with Ukraine requires the contracting parties to provide social security benefits to each other's citizens on similar ground with their nationals. The agreement with Serbia applies to social insurance benefits, meaning that contributory family benefits (the Infant Care Allowance and the Child Care Benefit) are available for Serbian nationals residing in Hungary. However, the agreements between Hungary and the first three non-EU countries of destination of Hungarian citizens (USA, Canada and Australia) do not cover the area of family-related benefits.

#### ***14.2.5 Guaranteed Minimum Resources***

Hungary does not provide a general scheme of guaranteed minimum resources for everyone. However, it provides different categorical schemes targeting specific groups of people in need, such as the elderly (Old Age Allowance) and individuals in working age (Benefit for Persons in Active Age). In general, entitlement to these benefits is conditional on nationality, but the rules extend the personal scope of the legislation to EEA residents, immigrants, settled persons, refugees, stateless persons and citizens of the countries that ratified the European Social Charter. It is compulsory to reassess the eligibility for these benefit every second year. Those

who receive any of these benefits can leave the country temporarily for up to 3 months, but they risk losing benefits if they stay abroad for a more extended period. Non-EU foreigners who do not fall in the abovementioned special categories are not entitled to claim these benefits.

People above the retirement age may claim the Old Age Allowance (*időskorúak járadéka*), a means-tested benefit for those without sufficient resources for living. Both single persons, couples and people living in domestic partnerships are entitled to claim this benefit. The income threshold for eligibility is different according to claimant's age and marital status. Unemployed people in working-age can claim for Benefit for Persons in Active Age previously discussed. Hungary's bilateral social security agreements do not cover the area of specific non-contributory minimum resources.

### 14.3 Conclusions

Immigration from the more developed Western European countries has never been an issue on the political agenda in Hungary, and the subjects of welfare chauvinism were always the citizens of countries east of Hungary. The dominance of contributory benefits is an effective filter in the Hungarian social security system because it gives preference to economically active people what prevents social dumping. Even the migration crisis has not enforced changes in the rules that guaranteed equal treatment of Hungarian and foreign nationals in most social security schemes. Perhaps, the success of the government's policy in stopping illegal migration was a share in the lawmakers' inactivity.

This chapter also showed that foreign nationals might face many problems when accessing social security benefits in Hungary. National residents can comply more comfortable with many rules compared to non-nationals. Concerning contributory benefits, the law does not distinguish between Hungarian and foreign citizens as long as they pay contributions. However, third-country nationals could have difficulties to join these schemes because membership is conditional on employment, and their chances to take a job in Hungary is often conditional on holding a work (and residence) permit. Consequently, whereas social law is neutral towards foreigners, labour law regulations prevent many of them from being a member of the social insurance schemes.

According to Hungarian law, the eligibility for social security benefits is not conditional on a prior residence in the country, but prior contribution payment may be an important factor in several cases. The prior contribution period affects the amount of sick pay and eligibility for disability benefits. It is particularly problematic that non-EU foreigners can aggregate their creditable periods only in the context of bilateral social security agreements between Hungary and their home countries. Considering that Hungary has signed not more than 14 bilateral agreements, we can assume that such a low number prevents a significant share of foreigners living in Hungary from having access to social security benefits.

The specific rules regarding the possibility to voluntarily join the social security schemes can also constrain foreigners' access to social protection, especially when compared to national residents. It is not possible to voluntarily join the unemployment, invalidity and maternity benefits scheme; and only 'domestic persons' can join the pension scheme voluntarily. To be recognised as a 'domestic person', a foreigner needs to hold a special status in Hungary (EEA citizen, stateless person, refugee, registered immigrant, settled person). Voluntary join the in-kind benefits scheme of health insurance voluntarily is possible, but it provides a much narrower range of benefits to 'volunteers' when compared to employees.

Restricting the export of benefits probably affects foreigners harder than domestic citizens. Pensions are the only benefits fully exportable to other countries. Unemployment benefit can be paid abroad for such a short period (3 months) that makes the question of exportability somewhat irrelevant. Legal regulations do not prohibit the export of disability benefits explicitly, but their frequent reassessment, which requires the beneficiaries' appearance before the relevant authority make the export of these benefits practically impossible. Eligibility for family benefits, sick pay, and the Old Age Allowance is conditional on an actual stay in Hungary.

Summing up, the general approach to social security legislation is the equal treatment of nationals and non-nationals. However, the restrictions on joining several schemes voluntarily, obtaining residence and work permit, exporting benefits combined with the low number of Hungary's bilateral social security agreements, leads to the significant disadvantage of foreigners residing in Hungary.

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# Chapter 15

## Migrants' Access to Social Protection in Ireland



Mel Cousins

### 15.1 Overview of the National Social Security System and Main Migration Features in Ireland

This chapter focuses on the link between migration and welfare in Ireland. The chapter has two main goals. First, it presents the general legal framework regulating the welfare system in Ireland, paying particular attention to any potential differences in terms of conditions of access to social benefits between national residents, non-national residents, and non-resident nationals. Secondly, the chapter discusses how these different groups of individuals access social benefits across five policy areas: unemployment, health care, family benefits, pensions, and guaranteed minimum resources.

#### 15.1.1 *Main Characteristics of the National Social Security System*

It is important to note that the social security and health care systems are almost entirely separate in Ireland. The social welfare system is administered by the Department of Social Protection (DSP). The health care system is the responsibility of the Department of Health. It is implemented by the Health Services Executive (HSE) in conjunction with a range of publicly and privately owned hospitals and institutions and staff who are both employed by the HSE and by private bodies and

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private doctors who have a contractual relationship with the HSE to provide public health care.

The foundations of the Irish health and social welfare system were laid when Ireland was a part of the UK. The first national system of income maintenance payments was established in the Poor Law (Ireland) Act of 1838. Subsequent UK legislation in relation to workmen's compensation (1898), old age pensions (1908) and national insurance (1911) also applied to Ireland. Following Independence in 1922, a number of additional schemes were introduced including unemployment assistance (1933), widows' and orphans' pensions (1935) and children's allowance (1943). In 1947 a new Department of Social Welfare (now the Department of Social Protection) and a Department of Health were established for the planning and administration of social welfare and health respectively. In 1952 the existing social insurance schemes were brought together into one unified system of social insurance.

The Irish social welfare system is primarily a system of income support payments which can be divided into three different categories: social insurance or contributory payments; social assistance or means-tested payments; and universal child benefit which is residence-based and unrelated to income or previous contributions (McCashin 2004, 2019; Cousins 2005, 2016).

Only a very limited number of health-related services are provided under the social insurance system, and the main public health care provision is by way of a separate national health scheme operated under the auspices of the Department of Health. Social insurance is funded on a PAYG basis by contributions paid by employers and employees with any short-fall being met by the State. Both social assistance and child benefit payments are funded out of general taxation.

In 2017 total social welfare expenditure amounted to €20bn.<sup>1</sup> This accounted for one quarter of current Government expenditure (26.4%) and 8.3% of GNP. The funding of this expenditure in 2017 came from the State (50%), employer's contributions to the SIF (36%), employee's contributions (11%) and contributions from the self-employed (3%). Of 2 million people in receipt of a social welfare payment, the vast majority (86%) were Irish, while 11% came from European Union (EU) countries and 3% were third-country nationals.<sup>2</sup>

The social insurance scheme applies to all private sector employees earning over a certain minimum payment each week (currently €38). Employees are insured against the risks of old age, disability, unemployment, invalidity, occupational injuries, survivorship, and maternity. Full social insurance cover was extended to the civil and public service in respect of new employees in 1995. Social insurance also covers the self-employed since 1988 but only in respect of a limited range of long-term benefits (e.g. state pension) and some short-term benefits such as maternity. Over three million people are insured under the social insurance scheme, over 2.3 million for all benefits.<sup>3</sup>

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<sup>1</sup> DEASP, Annual Statistical Report 2017.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

Pay-related social insurance (PRSI) contributions can be categorised into four groups:

- **Full-rate social insurance contributions** (Classes A, E, F, G, H, N) which qualify for most (or all) benefits.
- Self-employed contributions (Class S) which are generally only relevant to long-term benefits.
- Modified-rate social insurance contributions (Classes B, C and D) paid by certain civil and public servants.
- **Voluntary contributions** made by people (under age 66) who are no longer covered by compulsory PRSI provided they satisfy certain conditions.

'Credited' contributions are also awarded to persons who have already a record of paid contributions but who are unable to continue paying contributions due to certain contingencies such as unemployment or illness. These credited contributions assist in qualifying for social insurance benefits.

The social assistance scheme provides benefits for the traditional insurance categories and payments for lone parents, a residual supplementary welfare allowance for persons with insufficient means, an allowance for carers and an earnings-related payment for low income families in employment. Unlike social protection payments in most European countries, social welfare payments are flat-rated, with increases in respect of qualified adult and children.<sup>4</sup> A limited pay-related scheme, which was introduced in the 1960s, was phased out and eventually abolished. The Irish social welfare system is highly centralised. All aspects of planning, implementation and delivery are the responsibility of the DEASP.

In contrast to social protection systems in some European Catholic countries, the Irish case is notable for an absence of a corporatist welfare system, involving different insurance schemes for different categories of workers and tripartite management by employers, unions and the State. However, Cousins (2005) argues that the Irish welfare state is strongly segmented. If we take the three-sector model of the Irish labour force dividing this into the public sector, the foreign trans-national sector and indigenous industry and services, there is a striking complementarity between the preferences of these sectors and the structuration of the Irish welfare system. Employees in the public sector receive relatively high benefits through (largely unfunded) public occupational pensions schemes and have job security. Employees in the high-profit, high-productivity transnational corporations also tend to receive relatively high welfare benefits but this time through the private welfare capitalism of occupational benefits. Finally, the largest group of employees – those employed in the comparatively low-productivity, indigenous Irish manufacturing and services sector are covered only by the flat rate public welfare benefits.

Ireland has a national health type system funded by taxation (and co-payments). The system is a means-tested one with those with 'full eligibility' for health care being entitled to most health services without cost or subject to nominal charges

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<sup>4</sup>There are reduced payment for persons with lower levels of contributions.

while the rest of the population are entitled to public health care subject to charges. The total expenditure in 2017 was €15.2 billion for the delivery and contracting of health and personal social services.

### ***15.1.2 Migration History and Key Policy Developments***

Ireland has a long history of emigration dating back to before the Great Famine in the mid-1800s. In more recent decades, the pattern of net emigration continued up to the 1990s, except for a short period in the 1970s. However, with the improved economic conditions and the expansion of the EU from 2004, there was a major increase in immigration.

Following the Great Recession commencing in 2008, emigration again exceeded immigration but this has reversed as the Irish economy recovered.<sup>5</sup> The number of immigrants to the State in the year to April 2018 [i.e. May 2017 to April 2018] increased to 90,300 (6.7%), while the number of emigrants declined to 56,300 (–13.1%). This resulted in net inward migration to Ireland in 2018 of 34,000, the highest level of net inward migration since 2008. Of the people who immigrated to Ireland in 2018, almost one third (31.5%) were Irish nationals; another third (34.4%) came from the EU; while the final third (34.2%) came from non-EU countries.

In April 2016, persons born abroad accounted for 17.3% of the population.<sup>6</sup> The main EU countries whose nationals live in Ireland are Poland, the UK, and Lithuania (followed by Romania and Latvia). The main non-EU countries amongst immigrants to Ireland are Brazil, India and the USA (followed by China). The main countries to which Irish nationals emigrate are the UK followed by other EU15 countries. The main non-EU destination countries are Australia, the USA and Canada, reflecting a common language and long tradition of emigration.<sup>7</sup>

Ireland has had a common travel area with the UK for many decades and is not part of the Schengen Area. Irish migration policy has been largely driven by its membership of the EU (e.g. labour migration) and its links to the UK (e.g. refusal to join Schengen). However, the Irish approach to economic migration from EU countries has been relatively open (e.g. no restrictions were imposed on 'new' EU migrants accessing the labour market in 2004).

One area of concern has been economic migration from outside the EU and related asylum issues. From negligible levels, claims for asylum reached a peak of over 11,000 in 2002, leading to changes (discussed below) in access to social protection benefits and to ongoing changes in the law concerning the recognition of refugee status and related issues. However, in more recent years, the number of individuals claiming asylum has fallen back with 3700 applications in 2018 (up

<sup>5</sup> Population and Migration Estimates, CSO statistical release, 28 August 2018.

<sup>6</sup>CSO, Census 2016 Summary Results.

<sup>7</sup>[https://www.cso.ie/multiquicktables/quickTables.aspx?id=pea18\\_2](https://www.cso.ie/multiquicktables/quickTables.aspx?id=pea18_2)

**Table 15.1** Indicators of migrant integration in Ireland

Ireland (2014)	Value (0–100)
Overall score (with health)	52
Labour market mobility	38
Family Reunion	40
Education	30
Health	58
Political participation	73
Permanent residence	49
Access to nationality	59
Anti-discrimination	66

Source: <http://mipex.eu/ireland>

from 2900 in 2017). Eurostat reports that in 2017, 3058 third-country nationals received authorisation to reside in Ireland for family reasons (for the first time).<sup>8</sup>

Irish immigration policy more generally has tended to develop on an *ad hoc* basis without a very explicit policy or legal framework (for an overview of recent trends in immigration and asylum, see Sheridan 2018). However, Ireland has recently adopted a Migration Integration Strategy and an annual report monitoring integration presents a picture which is not disfavourable as to the successful integration of many migrants (McGinnity et al. 2018). As the report points out, however, migrants are a diverse group and some groups are much more likely to face unemployment, higher rates of poverty and racism. In a comparative context, the Migrant Integration Policy Index (MIPEX) shows that Ireland performs well on some indicators of integration (especially political participation), but poorly on others such as education, labour market mobility and family reunification (for a more in-depth discussion, see Arnold and Quinn 2017) (Table 15.1).

## 15.2 Migration and Social Protection in Ireland

Irish social welfare law does not contain any nationality requirements. Nor does it generally contain 'duration of residence' requirements. The key issue in relation to access to benefits for non-nationals is the habitual residence condition (HRC) which applies to social assistance payments and child benefit (although it does not apply to social insurance benefits). In addition, although not part of social welfare law, many non-nationals are granted residence statuses which require that they do not claim social welfare benefits.

The fact that there is no general residence requirement for social insurance payments means that Irish nationals may qualify for long-term benefits (such as

<sup>8</sup> Eurostat, First permits issued for family reasons by reason, length of validity and citizenship.

contributory state pension) even if they are living abroad (as long as they satisfy the contribution and other requirements). The same applies in principle to non-nationals (both EU and non-EU) although in practice such persons are less likely to have the relevant Irish social insurance contributions. The following social insurance payments can be paid abroad:

- [Invalidity Pension](#)
- [State Pension \(Contributory\)](#)
- [Disablement Benefit](#) under the occupational injuries scheme
- [Guardian's Payment \(Contributory\)](#)
- [Widow's, Widower's or Surviving Civil Partner's \(Contributory\) Pension](#)
- [Death Benefits under the Occupational Injury Benefit Scheme](#)
- [Bereavement Grant.](#)

There are generally specific disqualifications in the case of 'absence from the state' in relation to short-term social insurance benefits (such as illness benefit or jobseekers benefit) so that payment abroad is generally not allowed, subject of course to specific EU rules. The rules concerning specific provisions are discussed below. However, in general, people on social welfare are allowed to take up to 2 weeks holidays abroad each year and the social welfare payment will continue to be paid.<sup>9</sup>

Prior to 1 May 2004, there was no long-term 'residence' requirement in most areas of Irish social welfare law. Persons who were resident outside the country were disqualified for certain benefits, in particular means tested payments. However, individuals moving from another country qualified for benefits more or less immediately (subject to satisfying the other relevant conditions). In the run-up to the accession of the eight new Member States from Central and Eastern Europe (in addition to Malta and Cyprus), a number of EU countries exercised their rights under the accession treaties to impose restrictions on the immigration of workers from the new Member States for a period of up to seven years. Ireland did not do so. However, in the Social Welfare (Miscellaneous Provisions) Act, 2004, Ireland introduced a new habitual residence condition (HRC) in relation to all means tested allowances and child benefit. Social insurance benefits remain payable without any such restrictions.<sup>10</sup>

The relevant HRC provisions are now contained in Section 246 of the Social Welfare (Consolidation) Act 2005 and in each of the relevant chapters concerning the payments affected. These provisions require individuals to be 'habitually resident' in Ireland in order to be eligible to apply for jobseeker's allowance, state pension (non-contributory), widow(er)s pension, guardians payment (non-contributory), one parent family payment, carer's allowance, disability allowance, supplementary

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<sup>9</sup>There are a number of exceptions in relation to specific schemes which affect very few people and are not discussed here.

<sup>10</sup>The requirement of a certain minimum number of contributions to qualify for insurance benefits may mean that migrants will not immediately qualify for benefits although persons covered by EU law may be able to aggregate contributions paid in other states in order to qualify.

welfare allowance (except exceptional needs payments and urgent needs payments), and child benefit.

Section 246(4) of the Social Welfare (Consolidation) Act, 2005 (as amended) (the Act) states that officers should take into consideration all the circumstance of the case when determining if a person is habitually resident in Ireland, including: a) the length and continuity of residence in the State or in any other particular country; b) the length and purpose of any absence from Ireland; c) the nature and pattern of the person's employment; d) the person's main centre of interest, and; e) the future intentions of the person concerned as they appear from all the circumstances.

In 2009 the Oireachtas [Parliament] made it a requirement that, in order to be habitually resident, a person must have a right to reside (RtR) in Ireland. S. 246 (5) of the Act now states that 'a person who does not have a right to reside in the State shall not, for the purposes of [the] Act, be regarded as being habitually resident in the State.' S. 246(6) goes on to list various categories of persons – including Irish citizens, a person who has a right to enter and reside in Ireland under various EU laws, and refugees in respect of whom a declaration of refugee status is in force – who are to be taken to have a right to reside in Ireland. Conversely, s. 246(7) provides that various persons shall not be regarded as being habitually resident in the State for the purpose of the Act. Note that this applies to habitual residence in general and does not relate only to rights of residence. These include asylum seekers in respect of whom a declaration of refugee status has not (yet) been granted (s. 246(7)(a)).

The HRC applies to both nationals and non-nationals although it will, of course, be easier in many cases for Irish nationals to satisfy the HRC as they automatically have a right to reside in Ireland whereas non-nationals do not. The HRC is, of course, subject to EU law so that if a person is entitled to a benefit under EU law (e.g. where Ireland is the competent Member State) then EU law overrides the HRC.

The structure of the Irish system means that in relation to most social benefits, resident nationals and foreigners are formally treated the same. However, in the case of those payments covered by the HRC, in practice it will generally be more difficult for an EU national to qualify for a benefit than for an Irish national to do so, and more difficult again for a non-EU national to do so. However, there is no direct discrimination against non-nationals and the Irish courts have held that the HRC is not in breach of Irish or EU law.<sup>11</sup>

One other area in which the law might affect entitlement to benefits is that, in many cases, third-country nationals will require work permits in order to work legally in Ireland. It is understood that foreign nationals who require an employment permit under the Employment Permits Act 2003 (as amended) but who are in employment without such a permit are *not* considered to be insurable.<sup>12</sup> Therefore, they would be unable to build up an entitlement to a contributory benefit.

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<sup>11</sup> Munteanu v Minister for Social Protection, [2017] IEHC 161; [2019] IECA 236.

<sup>12</sup> <http://www.welfare.ie/en/Pages/Scope%2D%2D-Insurability-of-Employment.aspx>

### ***15.2.1 Unemployment***

There are two main unemployment payments: contributory jobseeker's benefit and mean-tested jobseeker's allowance. To qualify for Jobseeker's Benefit (JB), one must be aged under 66 and be unemployed; have had a substantial loss of employment; be capable of work; be available for and genuinely seeking work; and satisfy the contribution requirements.

To qualify for Jobseeker's Benefit, one must have paid Class A, H or P PRSI contributions. Class A is the category paid by most private sector employees. Class H is paid by soldiers, reservists and temporary army nurses, who do not qualify for Jobseeker's Benefit until they have left the army. Class P applies to sharefishermen or sharefisherwomen classified as self-employed. To qualify, a person must have paid:

- At least 104 weeks of PRSI; and
- 39 weeks of PRSI paid or credited in the relevant tax year; or
- 26 weeks of PRSI paid in the relevant tax year and 26 weeks of PRSI paid in the tax year immediately before the relevant tax year.

The relevant tax year is the second-last complete tax year before the year in which the claim is made. So, for claims made in 2018, the relevant tax year is 2016. Jobseeker's Benefit may be paid for up to 156 or 234 days of unemployment depending on the total contributions paid since commencing employment. A person with 260 or more contributions paid may qualify for 234 days and a person with less than 260 total contributions paid will qualify for 156 days. A separate Jobseeker's Benefit (Self-Employed) was introduced in November 2019.

The rules for the means-tested allowance are similar but this is also subject to the HRC. As noted, to be entitled to either payment a person must be available for work. DEASP interprets this as meaning that the person must be legally able to work. Thus, a non-EU national who does not have a work permit will not be considered to be available for work and would not qualify for a payment.

### ***15.2.2 Health Care***

In terms of entitlement to health care, the Health Act 1970 draws a distinction between persons having 'full eligibility' for services (Category 1) and those with 'limited eligibility' (Category 2). Persons with 'full eligibility' are commonly described under the non-statutory name of medical-card holders. They are defined as 'persons who, in the opinion of the Health Services Executive are unable without undue hardship to arrange general practitioner medical and surgical services for themselves and their dependants'. In assessing who qualifies for this category, the Health Service Executive takes into consideration the person's overall financial situation. In practice, the determination of who is entitled to 'full eligibility' is

implemented by departmental circulars. Those with medical cards Category 1 gain access to a range of health and social care services without charge (or subject to limited charges), including GP care, and inpatient and outpatient hospital care. However, due to long waits for some services (outpatient appointments, planned hospital care, etc.), while there is an entitlement to care, people may be unable to access care within a reasonable period of time. People in Category 1 get access to all prescription drugs subject to limited charges. Those without medical cards (category 2) either access public hospital care free of charge (public outpatient appointment) or subject to a statutory charge. However, most have to pay the full cost of visiting a GP and the initial proportion of prescription costs.

The Health Acts limits entitlement to health care to persons who are 'ordinarily resident in the State'. The concept of ordinary residence has received relatively little judicial consideration in Ireland – especially in a health and social welfare context. Section 4 of the 1991 Act allows the Minister to issue guidelines to the HSE to assist it in deciding whether or not a person is ordinarily resident in the State. These guidelines provide that a person will normally be regarded as 'ordinarily resident' in Ireland if he/she satisfies the HSE that it is his/her intention to remain in Ireland for a minimum period of one year. The person's dependants must also satisfy the criterion of 'ordinary residence' in order to establish eligibility for health services.

However, the law provides that a person who is not ordinarily resident in Ireland but who, in relation to a particular service which is available to persons with full eligibility, is considered to be unable, without undue hardship, to provide that service for himself/herself or the dependants shall be granted full eligibility for that service. Thus a non-resident person may be granted full eligibility in a case of hardship. The 'ordinary residence' rule is, of course, subject to the provisions of EU law. In addition, persons may be entitled to seek health care treatment abroad under EU law.

Unlike many EU countries in Ireland, cash benefits related to sickness and disability operate entirely separately from the health care system. There are three main sickness and disability benefits: short-term illness benefit (for those incapable of work), long-term invalidity pension (for those permanently incapable of work), and the means-tested disability allowance. In the case of illness benefit, a person must satisfy the following two conditions to qualify for payment: s/he must have at least 104 weeks of PRSI contributions paid since starting work and a record of contributions in a recent tax year. In the case of invalidity pensions, the claimant must have 260 paid PRSI contributions (Class A, E, H or P) and 48 contributions paid (Class A, E, H or P) or credited in the last or second last complete contribution year before the claim. In general, the long-term invalidity pension may be payable abroad but, subject to specific EU rules, the other illness and disability benefits are generally only payable in Ireland.

### ***15.2.3 Pensions***

The Irish pension system provides for a state pension (contributory) and a means-tested state pension (non-contributory). Pension age is currently 66 but is being raised on a phased basis to 68 (to age 67 from 2021, age 68 from 2028). There is also a specific widow's and widower's pension (both contributory and non-contributory). In practice, most of the people in receipt of these pensions are over pension age.

To qualify for a State Pension (contributory), one must be aged 66 or over and have paid Class A, E, F, G, H, N or S social insurance contributions. A person must have paid social insurance contributions before a certain age (generally 56), have a certain number of social insurance contributions paid (currently 520) and have a certain average number of contributions over the years since s/he first entered insurance – the rate of pension depends on the average number of contributions.

In general, the contributory pensions can be exported but non-contributory pensions cannot. The HRC applies to the non-contributory pensions and, thus, a person who is not habitually resident in Ireland as defined above (including having a right to reside in Ireland) will not qualify for pension. There do not appear to be any other provisions which would specifically affect non-nationals.

### ***15.2.4 Family Benefits***

In the case of family benefits, Ireland has a maternity benefit (payable for 26 weeks), a paternity benefit (payable for 2 weeks) and is in the course of introducing a parental benefit (payable from November 2019). These are all insurance based payments and the HRC will not apply. Therefore, there are no specific obstacles to non-nationals qualifying for these benefits if they satisfy the relevant conditions. Maternity benefit may be payable abroad in EU/EEA countries (under EU rules) and for up to 6 weeks in other countries.

The PRSI contributions can be from both employment or self-employment – the PRSI classes that count for Maternity Benefit are A, E, H and S (self-employed). To qualify for the benefit, employed persons must have at least 39 weeks of PRSI paid in the last 12-month period; or at least 39 weeks of PRSI paid since first starting work and at least 39 weeks of PRSI paid or credited in the relevant tax year or in the tax year immediately following the relevant tax year; or at least 26 weeks of PRSI paid in the relevant tax year and at least 26 weeks PRSI paid in the tax year immediately before the relevant tax year.

In the case of child benefit (a universal family benefit payable to all persons with children), the HRC does apply (subject to EU law). In addition, and again subject to EU law, the child must be ordinarily resident in Ireland. Therefore, it will in general be more difficult for non-nationals to qualify for child benefit. Irish nationals living outside Ireland will not generally qualify. In addition, as noted above, asylum

seekers are specifically excluded from those who are habitually resident in Ireland. Therefore, asylum seekers (almost inevitably non-EU nationals) cannot qualify for child benefit (or other payments subject to HRC).

### ***15.2.5 Guaranteed Minimum Resources***

The Irish minimum income payment is known as supplementary welfare allowance (SWA). This is a residual (means-tested) payment payable to persons who do not qualify for one of the other conditional payments in the social welfare code (and who are not in full-time employment or study). It is also payable to persons pending a decision on their claim for a mainstream payment and on an ongoing basis where there is no such entitlement. It is not time-limited. The SWA system provides for additional weekly supplements in respect of costs such as housing and diet, for urgent needs payments and for once-off exceptional needs payments.

The HRC applies to SWA (except exceptional needs payments and urgent needs payments). Thus while non-nationals (both EU and non-EU) are generally eligible for SWA, they may not qualify for it due to the HRC and claiming SWA may indicate that an EU national does not have a right to reside. In addition, asylum seekers (who are not considered to be habitually resident) are not entitled to SWA. They are instead provided for by a system of 'direct provision' (DP) which involves the provision of accommodation, food and other needs. There is also a small cash payment for people in DP.

### ***15.2.6 Bilateral Social Security Agreements***

Ireland has bilateral Social Security Agreements with Canada, the Republic of Korea, Australia, the United States of America, New Zealand, Québec, Switzerland (largely superseded by EC Regulations), Japan and the United Kingdom covering those parts of the United Kingdom that are outside of the European Union at the time of writing i.e. Isle of Man and the Channel Islands. These agreements cover the main (non-EU) countries where Irish nationals emigrate (USA, Canada and Australia) and the country which is the largest source of non-EU migrants (i.e. USA) but not Brazil, India and China (which are the next largest sources of such migrants). These agreements protect the pension entitlements of Irish people who go to work in these countries and they protect nationals of those countries who work in Ireland. They allow periods of Irish social insurance and, depending on the legislation in the other country, periods of residence/contributions which are completed in the second country to be taken into account for determining workers' entitlement to pensions. They are generally based on the approach adopted in the EU co-ordination regulations and include specific arrangements for posted workers. The Agreements cover long-term payments (state pension, invalidity pension, widow's/

widower's pension, guardian's payment), without covering unemployment or short-term illness. Ireland and the UK have also agreed a new bilateral agreement which will take effect when the transition period of the UK departure from the EU expires at the end of 2020.

These agreements do not cover health care (in-kind). However, Ireland and Australia have a reciprocal health agreement. This means that Australian visitors to Ireland are entitled to receive emergency public hospital treatment subject to the normal charges for non-medical card holders in Ireland. They are also entitled to assistance towards the cost of prescribed drugs and medicines on the same basis as people normally resident in Ireland. Similarly, Irish visitors to Australia will receive emergency services and assistance towards the cost of prescribed drugs and medicines on the same basis as persons ordinarily resident in Australia.

### 15.2.7 *Obstacles and Sanctions*

As discussed, the main obstacle in the social protection system to access to benefits for non-nationals is the HRC. Table 15.2 shows the total number of claimants disqualified on the basis of the HRC, with a breakdown by nationality. As observed, after a peak in 2009, the numbers of individuals disqualified from accessing social benefits have declined significantly. However, those affected are mainly non-nationals.

Table 15.3 also shows the number of appeals and their outcomes, indicating that the number of appeals has declined in recent years and they are generally more likely to be successful than in the previous period.

Claiming a means-tested social welfare payment can also impact on a person's right to reside, on family reunification and on naturalization as it may indicate that a person is not self-sufficient. However, it does not appear that there has been any quantitative study of the extent to which this occurs. In addition, a number of immigration statuses for third-country nationals require that a person does not claim a social welfare benefit.

**Table 15.2** Claims disallowed under Habitual Residence Condition, 2005–2015

Nationalities	2005	2006	2007	2008	2009	2010 <sup>a</sup>	2011	2012 <sup>b</sup>	2013	2014	2015**
Irish	N/A	N/A	N/A	N/A	N/A	650	455	428	264	240	N/A
Other	N/A	N/A	N/A	N/A	N/A	5256	4039	2389	2580	2318	N/A
Total	4599	4361	5123	6297	10,582	5906	4494	2817	2844	2558	1380

Source: Oireachtas [Parliament] Debates, 25 October 2016

<sup>a</sup>Figures for 2010 are incomplete due to industrial action

<sup>b</sup>The figures for 2012–2015 do not contain Carers Allowance

**Table 15.3** HRC appeals finalised 2005–2016

Year	Total	Allowed	Part allowed	Disallowed	Withdrawn
2005	535	216	4	315	0
2006	705	255	21	427	2
2007	699	182	8	507	2
2008	889	162	16	710	1
2009	1219	254	39	923	3
2010	3817	625	77	3111	4
2011	4551	1799	279	2470	3
2012	1827	846	127	844	10
2013	1191	441	64	683	3
2014	1171	448	56	665	2
2015	886	342	31	510	3
2016	712	251	26	435	0
<b>TOTAL</b>	<b>18,202</b>	<b>5821</b>	<b>748</b>	<b>11,600</b>	<b>33</b>

Source: Oireachtas [Parliament] Debates, 21 February 2017

### 15.3 Conclusions

Historically Ireland had low levels of immigration from other countries and the social welfare system did not include any nationality or, in most cases, residence requirements. However, given the expansion of the EU in 2004 and concerns about a significant increase in migrant flows, Ireland followed the earlier UK example by introducing a habitual residence test. Subsequently, in 2009, Ireland again followed the UK approach by introducing a right to reside as part of the HRC. This forms the main obstacle to non-nationals qualifying for means-tested benefits and child benefit. There has been considerable debate about the HRC but this has only led to minor changes in the law and clarification of how the HRC is to be applied. As we have seen, claiming a benefit may also affect a person's access to family reunification and a number of immigration statuses require that one does not claim social welfare. Studies of the impact of the HRC are set out in Pavee Point (2011); Crosscare et al. (2012); and SAFE Ireland (2013).

Concerns about a significant increase in asylum seekers coming to Ireland in the late 1990s and early 2000s led to the introduction of a system of direct provision (see Working Group 2015). This has meant that asylum seekers are provided for separately to the general social welfare system.

In the case of health care, there has been a long-standing rule that a person must be ordinarily resident in Ireland (subject to limited exceptions). The operation of the health care system is rather opaque and it is entirely unclear how this is implemented in practice (see also Quinn et al. 2014). There are very few studies of this topic (see, e.g. Migge and Gilmartin 2011; Stan 2015).

There is not a great deal of debate about these issues at present and opposition to the HRC appears to have abated somewhat as its application has been refined by DEASP and it has become more routine. Legal challenges to the HRC itself have

been unsuccessful although there have been a number of more successful challenges concerning whether or not a person has a right to reside under EU law.<sup>13</sup>

So, on the one hand, there is little discussion about relaxing the current rules but, on the other, there do not appear to be any concrete proposals to restrict further access of non-nationals to benefits. While there are, from time to time, headlines about abuse of the Irish social welfare system by non-nationals, this has not reached the same salience in societal and political debates as in other countries such as the United Kingdom.

Overall, Irish social welfare policy on migrants has developed not from a social protection perspective but rather from a labour market and immigration control approach. On the one hand, there has been a desire to encourage labour migration into Ireland but, on the other, a desire to discourage unwanted ‘economic’ migration (i.e. migration which may be economically justified from the migrant’s perspective but is not considered to be so from the government’s perspective). Given the absence of a comprehensive immigration framework, the limited capacity of the immigration authorities to enforce the law, and the practical difficulties in doing so (e.g. in enforcing deportation), the social welfare system has been used to discourage unwanted immigration by removing (or limiting) entitlement to social protection. Of course, this took place within the context of EU rules so that changes which applied to EU nationals (such as the HRC) had to be EU-law compliant. In contrast, changes applying to third country nationals (such as the Direct Provision scheme) are subject to challenge under the Irish Constitution and/or the European Convention on Human Rights and these provisions have generally been upheld in the Irish courts.<sup>14</sup>

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<sup>13</sup> C-442/16 – Gusa v Minister for Social Protection (2017).

<sup>14</sup> C.A. -v- Minister for Justice and Equality [2014] IEHC 532.

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# Chapter 16

## Migrants' Access to Social Protection in Italy



William Chiaromonte

### 16.1 Overview of the Welfare System and Main Migration Features in Italy

#### 16.1.1 Main Characteristics of the National Social Security System

The Italian welfare state started to develop only by the end of the nineteenth century. The social insurance has been a fundamental element for accessing social benefits since the post-war period, especially after the 1948 Italian Constitution that has defined social protection as an essential function of the State, thus creating a consistent catalogue of fundamental social redistribution rights (Articles 2, 3, 32, 38 and 117) (Ascoli 2011; Ferrera et al. 2012; Chiaromonte and Giubboni 2016). The situation began to change during the 1970s, with the fiscal crisis having a gradual impact on social benefits and welfare structure (Ferrera and Hemerijck 2003). The welfare state has become the main subject of programs designed to restore the public budget (Greve 2012), although this development has not occurred through an appropriate and comprehensive recalibration of the overall system (Palier 2010; Ascoli and Pavolini 2012). This has led to a situation in which the number of beneficiaries of certain social benefits has been substantially reduced, causing an infringement of the principle of equality enshrined in Art. 3 of the Constitution as it triggered manifest disparities in treatment based on citizenship or residence (Chiaromonte 2013).

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Between the 1980s and 1990s, the process of transformation and restoration of the social state has continued through the progressive transfer of powers and financial budgets from the central bodies to the local ones. This has led to a significant fragmentation of the social services and benefits offered on the national territory. The efforts to rationalize the social protection made since the mid-1990s have not overcome, at least not completely, the fragmentation and categorization of the instruments that historically characterize the structure of the Italian welfare state; nor they have been able to mitigate the inhomogeneity of the provision of social benefits. The largest part of social spending is still absorbed by the pension system at the expense of policies to support families, children, unemployed people, etc. Furthermore, a clear gap in the protection of the different occupational categories exists in terms of access to social benefits. The outcome is a sharp segmentation between insiders (those who are covered, mainly employees of the public administrations and large companies) and outsiders (those who are not covered, mainly workers in the informal economy).

Currently, the Italian welfare state is characterized by the co-existence of three main schemes (see also Pessi 2016; Ferrante and Tranquillo 2019; Persiani and D’Onghia 2019; Cinelli 2020; Giubboni and Cinelli 2020):

- a social security scheme strongly based on employment and on a contributory pension system organized around compulsory social insurance, which still represents the core and fundamental feature of the Italian welfare state. Only workers can benefit from measures aimed to integrate and/or replace their income in case of senility, illness, injury, unemployment, etc. Those social benefits based on contribution (old-age pensions, unemployment benefits, maternity/paternity benefits, etc.) are provided according to formulas that establish a correspondence between contributions paid and insurance claim (Art. 38(2) Constitution);
- a universal scheme, mainly organized around the healthcare sector, in which benefits are guaranteed to all individuals regardless of their active participation in the labour market, and independently from a direct contribution to the service, insofar as these services burden on the general taxation system;
- a social assistance scheme for individuals in need (Art. 38(1) Constitution) and social benefits (maternity allowance, earning-related benefits for the family, inclusion income, etc.) financed by the general taxation.

### ***16.1.2 Migration History and Key Policy Developments***

The transformation of Italy from an emigration country to a country of immigration has started at the beginning of the 1970s (for an analysis of national migration policies, see Colucci 2018; for an in-depth contextualisation of the Italian emigration, including statistics on nationals residing abroad, see Caldarini 2020). In particular, arrivals in Italy have begun to overtake departures in 1971. Since then, the number of foreigners in Italy has been increasing exponentially, from little less than 122.000

(1971 census) to 211.000 (1981 census), 356.000 (1991 census), 1.3 million (2001 census), reaching nearly 4 million (2011 census). Since 2013, the number is stable at around 5 million people.

On the basis of the data available, the foreign population in Italy was estimated at 5,8 million, of which around 5,2 million have a regular residential status (around 8,7% on the population) and nearly 600.000 are undocumented (IDOS 2019).<sup>1</sup> Around 3.7 million foreigners originate from non-EU countries. This number has been substantially stable over the last 3 years, also due to a significant decrease in the arrivals by sea since 2017 (following the so-called “migrant crisis” which has led to a significant increase in the arrivals by sea in Italy and a parallel surge of requests for international protection). According to UNHCR estimates, there are around 354.000 beneficiaries of international protection currently residing in Italy, accounting for 0,6% of the total population.

By the end of 2019, there were approximately 2.5 million workers with foreign citizenship in Italy, thus accounting for 10,7% on the overall employed population. One-third were performing low-skilled jobs mainly in the service sector (where foreign workers represent more than two-thirds – 65,9% – of all workers), or in the industrial or agricultural sector (where foreigners account for 27,7% and 6,4% of all workers).

Half of all foreigners residing in Italy (50,2%) are citizens of a European country. One fifth of all foreign residents (21,7%) originates from Africa and a slightly lower quota from Asia (20,8%). There are around 370.000 foreigners from the Americas, mostly Latin-Americans (7% of all foreign residents). Romanians represent the largest foreign group (23% of all foreigners), followed by Albanians (8,4%), Moroccans (8%), Chinese (5,7%) and Ukrainians (4,6%). These first five nationalities cover half of the entire foreign presence in Italy, while the first 10 (which include, in order, Philippines, India, Bangladesh, Moldavia and Egypt) reach a little less than two-thirds (63,5%).

Regarding the management of the migration phenomenon, a medium and long-term, effective and uniform strategy on migration policies has never been adopted in Italy. The frequent legislative actions (often with emergency character, and mainly aiming to regulate economic migration) have proved unsuccessful. Also because of the complexity and intricacy of the procedure provided for by the applicable norms, enshrined in the *Testo unico sull'immigrazione*,<sup>2</sup> the entry and residence for working purposes of third-country nationals is difficult (Chiaromonte 2013). In particular, *Testo unico sull'immigrazione* provides a two-tier articulation of migration policies for economic reasons. The first level is represented by the three year policy paper on immigration policy (Art. 3(1)-3(3)), which aims to define the general features of each annual determination of entrance flows, and measures for the integration of foreigners (the last document approved refers to 2004–2006). The second level of intervention, known as “*decreto flussi*” (Art. 3(4)), establishes

<sup>1</sup> All the data mentioned in this chapter have been extrapolated from the *Centro Studi e Ricerche IDOS*, 2019.

<sup>2</sup> Decreto legislativo 25 luglio 1998, n. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (Consolidated Law on Immigration).

annual maximum quotas of foreigners who are allowed to enter for working purposes, based on which entry visas and residence permits for working purposes are issued. In most recent years, the quotas for “*decreti flussi*” have been drastically reduced: the number of work permits dropped from 250.000 in 2007 to 30.850 in 2019. Such a nearly absolute closure of the legal entry channels for working purposes has determined a permanent violation of the norms that regulate entry and residence and, therefore, an increase in the number of foreigners irregularly residing in Italy, also considering the structural requests for foreign workers (especially seasonal) from the Italian labour market. Consequently, in recent years, migration inflows have leaned mainly towards international protection that has been used also by migrants motivated by economic reasons, even if it is not designed to regulate economic migration flows (Chiaromonte 2019).

Additionally, regularisation schemes for undocumented foreigners have also been established. They represent a para-ordinary management tool of the migration phenomenon. Since 1986, eight regularization schemes have been implemented, the latest in 2020.

## 16.2 Migration and Social Protection in Italy

For a long time, the Italian social security protection has been guaranteed solely to workers employed in the Italian territory, independently of their nationality, and to Italian workers employed abroad by Italian companies (in derogation from the territorial principle of social law, according to which workers are subject to the social security framework of their country of employment). Only since the mid-1990s the protection has been progressively extended to cover also self-employed workers. The European social security coordination (Regulation 883/2004) and the CJEU case law have further contributed to widen the concept of employment relationship (Chiaromonte and Giubboni 2014; Fuchs and Cornelissen 2015; Pennings 2020).

In order to qualify for social security protection in Italy, workers do not have to meet specific subjective requirements. Regarding age, for instance, the minimum working age is sufficient, normally set at 16 years old. Sex, instead, has no relevance at all for identifying the beneficiaries (for example, regarding pension benefits). Not even citizenship, usually, affects the social security protection, in view of the general principle according to which the non-contractual obligations are regulated by the law of the place where the respective factual situation has occurred (Art. 25 *disposizioni preliminari c.c.*). Therefore, the work performed by foreigners in Italy entails the right to social security protection according to the national legal framework. Notwithstanding that, in certain cases, a specific regulation may be required, as explained below for non-EU foreigners.

With regard to residence, the EU rule applies. Hence, the residence requirement, which may be one of the conditions to access social security benefits according to an EU member state national law, is not relevant. However, certain social security benefits cannot be accessed outside the state of residence, e.g. the “*assegno sociale*” (social allowance, as explained below).

Regarding the specific case of non-EU foreigners' access to social security, the Italian system is characterised by some peculiarities depending on the type of benefits (Chiaromonte 2013; D'Onghia 2017). For social security benefits, equal treatment between national citizens and non-EU foreigners is generally ensured.<sup>3</sup> Non-EU foreigners working in Italy are entitled to the same benefits recognised to Italian workers (including retirement and disability benefits, among others) upon payment of contributions to the National Institute for Social Security (INPS).<sup>4</sup> However, there are two exceptions: one concerning the case of the pension scheme for seasonal non-EU foreign workers (which are excluded from protection against unemployment and family benefits) and a second one regarding the failure to return the social security contributions paid in Italy by non-EU foreign workers, in case of repatriation.

In light of the principle of territoriality, non-EU foreigners are also subject to the social security framework of the country of employment, unless bilateral agreements concluded between Italy and third countries provide otherwise (Chiaromonte 2012). In that case, the foreign worker that has not accrued enough pension rights in Italy can integrate them by adding the contributions paid to the other signatory State. A further exception to the principle of territoriality is allowed if the presence of the foreign workers on the Italian territory is due to a transnational provision of services of short duration. In these cases, the social security framework of the hosting state is not relevant.

When it comes to the right of non-EU foreigners to access social assistance benefits, in the past, national legislation and local norms imposed restrictions based on the nationality or the residence permits of the applicants. These restrictions have raised several criticisms regarding their incompatibility with international law, EU law, and the Italian Constitution (Corsi 2017; Ferrara 2017; Orlandini and Chiaromonte 2017; Sciarra 2017; Bologna 2018; Chiaromonte and Guariso 2019). The Constitutional Court intervened to censure national and regional norms that

<sup>3</sup>The principle of equal treatment between national citizens and non-EU foreigners in terms of access to social security systems is protected both at international level (see ILO Conventions No. 97/1949, Art. 6, and 143/1975, Art. 10, on the protection of migrant workers; Convention No. 102/1952, Art. 68, and 118/1962, Art. 4, on social security; the ECHR norms that protect the social security benefits, Art. 14 and Art. 1 of the first Protocol attached to the Convention; and the provisions enshrined in the bilateral conventions on social security for migrant workers concluded with non-EU countries) and at EU level (especially, Art. 21 and 34 of the Nice Charter, but also the already mentioned measures aimed to coordinate the national social security systems, extended to non-EU foreigners by Regulation 1231/2010). At the national level, the principle of equality between nationals and non-EU foreign residents has been consistently recognized by the Constitutional Court in reference to fundamental and inviolable constitutional rights (*Corte costituzionale* nn. 120/1967 and 62/1994) which include social security rights (Art. 2, 3, 10(2), 38 Constitution) (*Corte costituzionale* nn. 80/1971 and 160/1974). Beyond the Constitutional norms, it is worth mentioning the Consolidated Law on Immigration, which is a collection of ordinary norms that guarantee to all foreign workers legally residing in Italy, and their family members, «equal treatment and full equality of rights as Italian workers» (Art. 2(3)). The relevant laws are available at: <http://www.normattiva.it>. Accessed 23 January 2019.

<sup>4</sup>*Istituto Nazionale della Previdenza Sociale*, <https://www.inps.it/>. Accessed 23 January 2019.

provided for the Italian citizenship as a mandatory requirement in order to qualify for the guaranteed minimum resource scheme and the non-contributory pension.<sup>5</sup> As a result of the Constitutional Court's decisions, the legal amendments imposed by the EU law and the judgments of ordinary courts, there are no longer social benefits reserved only to nationals.

The issue of the extended residence and/or the residence permit required to have access to certain social benefits is more complex. This requirement could potentially represent a form of indirect discrimination of foreigners inasmuch as the measures adopted, although apparently neutral, could jeopardize the interests of the individuals belonging to a given group. Originally, Art. 41 of the *Testo unico sull'immigrazione* did not make any distinction as to the access to social assistance between foreigners with a residence permit of at least one year (and their families) and Italian nationals. However, Law 388/2000<sup>6</sup> (Art. 80(19)) has restricted the access to various social assistance benefits only for third-country nationals who are long-term residents (in practice, foreigners who earn a certain income level and legally reside in Italy for at least 5 years). Since 2008, the Constitutional Court intervened in several occasions on the issue by emphasizing the unreasonableness of including the long-term residence status among the requirements for claiming social assistance benefits (e.g. incapacity pension, invalidity allowance, etc.).<sup>7</sup> The Court has declared the unconstitutionality of such legal provisions. Hence, when it comes to social assistance benefits aimed at supporting individuals who are in need, any distinction between nationals and legally residing foreigners is in conflict with the principles of equality (Art. 3 Constitution) and solidarity (Art. 2 Constitution).

### 16.2.1 *Unemployment*

The Italian unemployment scheme only provides unemployment insurance benefits (there is no unemployment assistance scheme). The compulsory social insurance scheme for employees and assimilated, who involuntarily lost their jobs, is financed partly through contributions from employers, partly through general taxation, and providing earnings-related benefits. The main unemployment benefit is the so-called NASPI ("nuova assicurazione sociale per l'impiego").<sup>8</sup> In order to access the

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<sup>5</sup> For instance, *Corte costituzionale* nn. 432/2005 and 40/2011.

<sup>6</sup> Legge 23 dicembre 2000, n. 388, Disposizioni per la formazione del bilancio annuale e plurianuale dello Stato (legge finanziaria 2001).

<sup>7</sup> For instance, *Corte costituzionale* nn. 306/2008, 11/2009, 187/2010, 239/2011, 40/2013, 22/2015 and 230/2015.

<sup>8</sup> Decreto legislativo 4 marzo 2015, n. 22, Disposizioni per il riordino della normativa in materia di ammortizzatori sociali in caso di disoccupazione involontaria e di ricollocazione dei lavoratori disoccupati, in attuazione della legge 10 dicembre 2014, n. 183. This section does not refer to Dis-Coll (unemployment benefit for para-subordinate workers assimilated to employees and "new" self-employed).

NASpI, resident nationals and (EU and non-EU) foreign residents must be involuntarily unemployed for more than 6 months, able to work, available for the employment office, not benefit from any other pension nor receive any salary higher than the personal annual taxable ceiling and apply within 68 days (98 days in case of lawful dismissal for misconduct). The qualifying period of contribution for accessing unemployment benefits is at least 13 weeks of work insurance during the 4 years prior to the job loss and at least 30 days of work insurance during the last 12 months prior to dismissal. The benefit amounts to 75% of the monthly reference earnings with a monthly ceiling of € 1195 plus 25% of worker's actual monthly pay exceeding this ceiling. The maximum payable amount is equal to € 1300 (gross) per month. From the fourth month of receipt of the benefit, the amount is reduced by 3% every following month. The statutory duration of the benefit is equal to half the number of weekly contributions paid during the last four years prior to dismissal.

With particular reference to seasonal non-EU foreign workers, Art. 25 of the *Testo unico sull'immigrazione* provides that they cannot accede to NASpI, albeit their contributions – anyway due by the employer – are paid to INPS, and they are expressly intended to support social care services in favour of foreign workers. National citizens residing abroad in the service of an Italian employer (either in EU or non-EU countries) can access NASpI from Italy under the same eligibility conditions as those applied for resident nationals; in addition to NASpI benefits, they may be entitled to a special unemployment benefit for repatriated workers.<sup>9</sup>

### **16.2.2 Health Care**

The Italian National Health Service (SSN) was established by Law n. 833/1978<sup>10</sup> and it covers all inhabitants (based on residence). The SSN generally provides services in kind and its financing mainly occurs through the National Health Fund entirely supported by appropriations received by the State budget and proportionally distributed among all Regions. The main funding source is the IRAP (Regional tax on productive activities, a tax-financed scheme). Another funding source is the joint participation of citizens to the expenditure for the services received (the so-called "ticket").

Regarding benefits in kind in case of sickness, the health insurance card (for national citizens and EU citizens) and the residence permit issued for one of the reasons stipulated in the frame of the compulsory registration at the National Health Service (for non-EU foreigners) are sufficient to qualify for such benefits. Art. 35 of the *Testo unico sull'immigrazione* recognises to undocumented migrants essential medical and hospital care in case of illness or injury, programs of preventive medicine for the safeguard of individual and collective health, pregnancy protection and maternity, protection of children's health, vaccination and prophylaxis, without

<sup>9</sup>Legge 25 luglio 1975, n. 402, Trattamento di disoccupazione in favore dei lavoratori rimpatriati.

<sup>10</sup>Legge 23 dicembre 1978, n. 833, Istituzione del servizio sanitario nazionale.

putting any burden on them if they do not have sufficient economic resources. In short, while non-EU foreigners legally residing in Italy have equal access to health benefits in kind with resident nationals, undocumented foreigners can only enjoy the core content of the healthcare protection (Corsi 2019).<sup>11</sup> However, as the recent Constitutional Court's case law demonstrates, the Regions have, in some cases, extended the personal scope of their healthcare legislation to non-EU foreign residents. This has led to a broadening of the principle of equal treatment in medical care to the benefit of undocumented foreigners, compared to what is provided for by the *Testo unico sull'immigrazione*.<sup>12</sup>

With the exception of national workers posted in Italy, Italian citizens residing abroad in other EU Member States or in non-EU countries with which no agreement with Italy is in force lose their right to healthcare in Italy and abroad upon cancellation from the municipal registry and registration to the AIRE (registry of Italians residing abroad). However, Italian citizens residing abroad and temporarily returning to Italy are entitled to free urgent hospital services for a maximum period of 90 days per year if they do not have any public or private insurance coverage for health services. Italian citizens registered to the AIRE and residing in other EU countries, temporarily staying in Italy for reasons other than work or study, must submit the European Insurance Health Card (EIHC) issued by the foreign institution with which they are insured. If they do not have the EIHC, they can obtain the reimbursement of the health costs incurred in Italy by the health institution of their country of residence.

In order to claim cash benefits in case of sickness, resident nationals, non-resident nationals and resident EU foreigners have to send to INPS a medical certificate attesting their incapacity to work (there is no qualifying period of contribution, and the granting period is established by the applicable collective agreement). Non-residents nationals who work in the service of an employer based in Italy can access these cash benefits under the same conditions as national residents. Additionally, non-EU foreigners have to hold a residence permit for work purposes to access sickness benefits in Italy. Earnings-related benefits are generally provided by the employer at the expense of INPS.

Regarding invalidity benefits, an insured person whose working ability is permanently reduced to at least two thirds as a result of sickness or infirmity, documented by a medical certificate, is considered invalid for the purpose of invalidity allowance (“assegno ordinario d’invalidità”). The incapacity pension (“pensione di inabilità”) is payable to the insured person or beneficiary of the invalidity allowance who is absolutely and permanently incapable of any occupational activity.<sup>13</sup> It is a compulsory social insurance scheme for all private sector employees, financed by contributions covering employees with earnings-related pensions depending on contributions and duration of affiliation.

<sup>11</sup> Corte costituzionale n. 252/2001.

<sup>12</sup> Cfr., for instance, Corte costituzionale nn. 269/2010, 299/2010, 61/2011.

<sup>13</sup> Legge 12 giugno 1984, n. 222, Revisione della disciplina della invalidità pensionabile.

### 16.2.3 Pensions

The work insurance general compulsory scheme for old age (“*assicurazione generale obbligatoria per la vecchiaia*”) covers private sector employees by providing benefits calculated according to two determining factors: age and accrued contributions. Other compulsory schemes are provided for self-employed and a certain number of specific categories of workers, such as civil servants, professionals, atypical workers. The pension system is based on national defined-contributions scheme for those who entered the labour market after 1st January 1996 (for those who entered the labour market before that date, the system is “hybrid”). Contributions are paid by workers and employers to INPS. Those contributions are used to provide pensions received by those who are entitled in the same year (the so-called “*sistema a ripartizione*”, pay-as-you-go system).

The public contributory old age pension is called “*pensione di vecchiaia*”. Since 2019, those who entered the labour market before 1st January 1996 are entitled to this pension when reaching 67 years old and a minimum qualifying period of 20 years of paid and/or deemed contributions. For those who entered the labour market after 1st January 1996, in addition to the mentioned requirements, the amount of their pension must be equal to 1.5 times the amount of the social allowance (“*assegno sociale*”).<sup>14</sup> Otherwise, they can access the pension benefits at 71 years old with at least 5 years of effective contribution, independently from the benefit’s amount. These conditions apply equally to resident nationals, EU foreigners, non-EU foreigners (who also have to hold the residence permit for work purposes), and national citizens residing abroad. Non-EU foreigners cannot repay the pension contributions paid in Italy by the foreign worker in case of his/her repatriation.<sup>15</sup>

The public non-contributory pension (“*assegno sociale*”, social allowance) is addressed to Italian citizens residing in Italy for at least 10 years; EU citizens residing in Italy for at least 10 years; non-EU citizens residing in Italy for at least 10 years<sup>16</sup> and with an EU residence permit for long-term residents; refugees and holders of international protection. Beneficiaries must be at least 67 years old and their income must be below the legally established thresholds. The social allowance is temporary and the verification of the possession of the income requirements and actual residence takes place annually.

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<sup>14</sup> Legge 8 agosto 1995, n. 335, Riforma del sistema pensionistico obbligatorio e complementare; Legge 22 dicembre 2011, n. 214, Conversione in legge, con modificazioni del decreto-legge 6 dicembre 2011, n. 201, recante disposizioni urgenti per la crescita, l’equità e il consolidamento dei conti pubblici.

<sup>15</sup> Legislative Decree 286/1998, Art. 22(13).

<sup>16</sup> The 10-years residence requirement for non-EU foreigners has been deemed discriminatory, among other, by the *Tribunale* of Brescia 14.10.2015, and *Tribunale* of Vicenza, 2.8.2016.

### 16.2.4 Family Benefits

There are several types of maternity allowances in Italy. The maternity benefit (“*congedo di maternità*”) and paid nursing leave (“*permesso per allattamento*”) are granted to insured employees and assimilated groups (also self-employed) in case of childbirth and adoption. The benefit can be granted for 5 months, out of which 0, 1 or 2 months prior to confinement. The amount is 80% of earnings for the compulsory period (no ceiling). The duration of paid nursing leave is 1- to 2-hour daily nursing leave for the child’s mother or father: in case of part-time or full-time work, respectively, until the first birthday of the child. The amount is 100% of earnings (no ceiling). These conditions apply to national citizens, EU foreigners, non-EU foreigners having a residence permit for work purposes and national citizens who work abroad in the service of an Italian employers.

The state financed maternity allowance (“*assegno di maternità dello Stato*”) is granted to working mothers with low income or temporary unemployed mothers, including EU mothers and non-EU mothers who are long-stay permit holders.<sup>17</sup> In order to qualify for this benefit, mothers are required to prove 3 monthly contributions completed within 9 months prior to beginning of pregnancy or, in case of adoption, within the period from 18 to 9 months prior to the adoption. These conditions apply also to national citizens working abroad in the service of an Italian employer. Also, the maternity allowance (“*assegno di maternità dei comuni*”) is an economic compensation paid for 5 months by the municipality of residence to non-working mothers with low household income, including EU foreigners and third-country nationals who are long-term residents.<sup>18</sup> INPS extended the benefit also to non-EU citizens who are family members of EU citizens and to holders of refugee and international protection status.

Paternity benefit (“*congedo di paternità*”) is granted to insured employees and assimilated groups (also self-employed).<sup>19</sup> There are no qualifying conditions and the benefit is granted, in 2020, for 7 days (plus one day extra if the mother agrees to transfer from her maternity leave). The amount is 100% of earnings. The father may also claim for a paid maternity leave of up to 3 months after the child’s birth in case the mother does not claim for it, or if he has the sole charge of the child.<sup>20</sup> These conditions apply to national citizens, EU foreigners, non-EU foreigners having a residence permit for work purposes and national citizens who work abroad in the service of an Italian employers.

An optional supplementary parental leave (“*congedo parentale facoltativo*”) can be granted to insured employees and assimilated groups (self-employed excluded).<sup>21</sup>

<sup>17</sup> Decreto legislativo 26 marzo 2001, n. 151.

<sup>18</sup> Decreto legislativo 26 marzo 2001, n. 151.

<sup>19</sup> Legge 28 giugno 2012, n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita.

<sup>20</sup> Decreto legislativo 26 marzo 2001, n. 151.

<sup>21</sup> Decreto legislativo 26 marzo 2001, n. 151.

After expiry of the compulsory maternity/paternity leave, a reduced paid leave (30% of salary) may be claimed by either parent for a 6-month period until the child reaches the age of 3. This benefit can be claimed for further 5 months, at most, until the child is 12 years old if the claimant parent's salary does not exceed twice and a half times the minimum pension. The amount is 30% of earnings if the child is under 3 years old, unpaid if the child is 3–12 years old (with some exceptions). These conditions apply to national citizens, EU foreigners, non-EU foreigners having a residence permit for work purposes and national citizens who work abroad in the service of an Italian employers.

The earnings-related benefits for the family ("assegno per il nucleo familiare") is a special measure for the families with more than 3 minor children (residing in Italy, in another EU country or in a third country having concluded a social security agreement with Italy) and who dispose of limited assets and incomes.<sup>22</sup> Originally it was only envisaged for Italian nationals, and later it has been extended to EU nationals and third-country nationals who are long-term residents.

With particular reference to non-EU foreigners, the most recent legislation has been directed to ensure non-contributory social benefits (i.e. the maternity allowance and the earnings-related benefits for the family) to third-country nationals who are long-term residents (as well as to those foreigners who enjoy equality of treatment, established by EU norms, as for instance beneficiaries of international protection). This normative framework raises serious doubts regarding its reasonableness and legitimacy in light of European norms. Indeed, to make certain benefits (especially those against poverty) contingent upon a minimum income – as for the permit of third-country nationals who are long-term residents – seems to be in contradiction with the aim of the social assistance benefit at stake. In light of these arguments, ordinary judges have developed various interpretative solutions aimed to limit the scope of the measures that make the long-term residence as a condition for some non-contributory benefits, by disapplying the national norm on the grounds of its inconsistency with supranational norms.<sup>23</sup> The Constitutional Court has repeatedly declared analogous norms as illegitimate.<sup>24</sup>

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<sup>22</sup>Legge 13 maggio 1988, n. 153, Conversione in legge, con modificazioni, del decreto-legge 13 marzo 1988, n. 69, recante norme in materia previdenziale, per il miglioramento delle gestioni degli enti portuali ed altre disposizioni urgenti.

<sup>23</sup>The judges, for instance, have argued that the limitation to third-country nationals who are long-term residents constitutes a discrimination that violates the principle of equal treatment on social security, as provided by Art. 12, Directive 2011/98. Therefore, they have imposed the disapplication of the national norm inconsistent with the European legislation (e.g. *Tribunale* of Milano, 2.12.2016; *Tribunale* of Modena, 30.9.2016; *Tribunale* of Bari, 20.12.2016; *Tribunale* of Brescia, 23.8.2016). Also the Constitutional Court has affirmed that, under these circumstances, the ordinary judge has to apply directly the principle of equal treatment, *ex* Art. 12 Directive 2011/98 (Judgment n. 95/2017).

<sup>24</sup>*Inter alia*, *Corte costituzionale* nn. 2/2013, 4/2013, 172/2013 and 222/2013. Cfr. Biondi Dal Monte 2013.

### 16.2.5 *Guaranteed Minimum Resources*

Until 2019, the REI (“*reddito di inclusione*”, inclusion income) was a general scheme created in 2017 aiming to provide a minimum income for those who do not have sufficient resources to support themselves.<sup>25</sup> The scheme was organized both centrally and locally (shared responsibility): the request to obtain the REI was submitted to the municipality of residence (“*comune di residenza*”), but the benefit was granted by INPS. The REI consisted of two parts: an economic benefit, paid monthly through an electronic payment card (REI Card), and a personalized project of activation and social and labour inclusion, aimed at overcoming the poverty condition.

National residents were eligible to claim the REI. To be eligible for this benefit, EU foreigners were required to have the right of residence or the right of permanent residence and reside in Italy for a consecutive period of at least 2 years. Non-EU foreigners were required to be long-term residents and reside in Italy for a consecutive period of at least 2 years (the benefit was also granted to beneficiaries of international protection). National citizens residing abroad could not claim the REI.

The “*reddito di cittadinanza*” (citizenship income) has been introduced in 2019.<sup>26</sup> It aims to provide economic support and foster the social inclusion, being addressed to those who do not reach a given income threshold. The benefit is reserved to (beyond the Italian and EU citizens and their family members) foreigners who are long-term residents, who have to add to the EU long-term residence permit the further requirements asked to the Italian citizens as well: at least 10 years of residence in Italy (the last 2 years continuously), as well as the residence on the national territory for the length of the benefit. In other words, as far as concerns general benefits aimed to combat poverty, these are generally reserved for third-country nationals who have the EU long-term residence permit.

The Bergamo Tribunal has raised question of constitutional legitimacy of the norms for the part that provides for the requirement of the EU long-term residence permit.<sup>27</sup> Even if the question refers the *reddito di inclusione* (inclusion income), an institute which has been replaced by the *reddito di cittadinanza*, the Court’s decision will have an impact also on the latest institute, given the similarities between the two and the identity of the requirement prescribed.

This normative framework raises serious doubts of legitimacy as regards both EU law and the reasonableness principle. Indeed, according to Art. 9 of the *Testo unico sull’immigrazione*, the EU long-term residence permit is subject to income

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<sup>25</sup> Decreto legislativo 15 settembre 2017, n. 147, Disposizioni per l’introduzione di una misura nazionale di contrasto alla povertà. To benefit from REI, the entire family was requested to have a valid ISEE (indicator of the family economic situation) not exceeding 6.000 euros; a valid ISRE (indicator of the ISEE related income) not exceeding 20.000 euros; real estate (deposit, current accounts) not exceeding 10.000 euros (lowered at 8.000 euros for a couple and 6.000 euros for a single person).

<sup>26</sup> Legge 28 marzo 2019, n. 26, Conversione in legge, con modificazioni, del decreto-legge 28 gennaio 2019, n. 4, recante disposizioni urgenti in materia di reddito di cittadinanza e di pensioni.

<sup>27</sup> Tribunale di Bergamo, 1.8.2019.

requirements (an appropriate accommodation and an income as high as the social allowance). Therefore, the fact that the benefits, especially those to combat poverty, are subject to a minimum income seems in contradiction with their very aim.

The State also provides for a social allowance (“assegno sociale”)<sup>28</sup> and other non-contributory benefits such as the social card (an income support measure). On the basis of Article 132 of Law 112 of 1998, the State has transferred to the Regions legislative functions and administrative competences in the field of social services for disabled persons, minors, youngsters, elderly people, poor families, etc. Some of these competences have been delegated to municipalities which implement their own policies of social intervention. The law does not provide for general conditions or requirements for entitlement to municipal support (cash benefits or intervention by social workers).

Summing up, the main obstacles to access social security benefits in Italy are connected to the extended residence requirement and mostly concern non-EU foreigners. In fact, the national and regional legislator often makes the residence requirement a condition of the status of beneficiaries of social assistance benefits. As observed above, since these requirements can constitute forms of indirect discrimination to the detriment of non-EU nationals, they have been often “neutralized” by the ordinary and constitutional case law.

With reference to bilateral social security agreements, it is also worth mentioning that Italy has not signed agreements with those countries whose nationals represent the three largest groups of non-EU foreigners residing in Italy (Albania, Morocco and China), but only with non-EU countries that represent the three largest destinations of national citizens of Italy (USA, Canada and Australia). As far as the latter are concerned, it is provided for an easier access to social benefits only in relation to health care (in particular, invalidity benefits) and public contributory pensions, while nothing is planned for unemployment, family benefits and guaranteed minimum resources.

### 16.3 Conclusions

The most problematic aspect regarding migrants' access to social protection in Italy concerns the case of non-EU foreigners. However, this doesn't apply for the social security system where the principle of equal treatment between national citizens and non-EU foreigners is generally enforced (with the exception of the two cases mentioned above on the exclusion of the seasonal non-EU foreign workers from the protection against dismissal and the family allowance, on the one hand, and the missed repayment of the contributions paid in Italy by the non-EU foreign workers in case of his/her repatriation, on the other hand).

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<sup>28</sup> Legge 8 agosto 1995, n. 335.

Regarding access to the single social assistance benefits, the principle of equal treatment clashes with numerous national and regional legal provisions that differentiate the possibility to be entitled to these benefits on the grounds of the residence permit held by the applicant and/or of given residence requirements (on the national or regional territory). As discussed, these requirements are potential forms of indirect discrimination to the detriment of foreign nationals, considering that the measures adopted, although apparently neutral, are able to jeopardise the non-EU foreigners' interests the most. Notwithstanding that, in the Italian legal framework, we can also find requirements of this kind, for instance with regard to some family benefits and the benefits to combat poverty, the judges – ordinary and constitutional – in their judgments have mostly removed these requirements, thus reaffirming, via case law, the full equality of treatment between Italian and foreign nationals legally residing in Italy, as to the access to the single social assistance benefits.

Finally, with particular reference to the case of nationals residing abroad, access to social benefits from Italy is granted, in many cases – as we have seen – to those working abroad in the service of Italian employers. Yet, the large majority of Italian emigrants – who are not working in the service of Italian employers – are excluded, and this aspect certainly represents a critical point.

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# Chapter 17

## Migrants' Access to Social Protection in Latvia



Anhelita Kamenska and Jekaterina Tumule

### 17.1 Overview of the Welfare System and Main Migration Features in Latvia

#### 17.1.1 *Main Characteristics of the National Social Security System*

In characterising the Latvian welfare regime, most studies focus on the social policy developments in all the three Baltic states, due to the common legacies of the Soviet Union. After World War II, these states were incorporated into the Soviet Union and were subjects to the same social policy regulation as the whole Union. The three countries experienced a Soviet social protection system from 1940 to 1991.

During this period, the state was the main provider of welfare for its citizens. The coverage of the social security system was universal in the Soviet Union, with rather low benefit levels. Everyone was guaranteed security in all cases of loss of working capacity, old age, invalidity, illness and the loss of the breadwinner. The extensive social policy (full employment, free education and health care) and social security with its huge redistributive feature promoted equality within classes and various social groups (Aidukaite 2011). The Soviet welfare system was universal and paternalistic. Establishing a mechanism that would help shift responsibility for social security from the state to the individual was considered a high priority (Rajevska and Romanovska 2016). Path dependency with the communist era was one of the reasons why the right-wing politicians in the Baltic states found the Bismarckian model too solidaristic and turned to liberal welfare policies (Toots and Bachman 2010).

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As regards Latvia and the other two Baltic states, it is commonly concluded that their welfare regimes can be characterised as neoliberal with low social spending and commodification degree, as closely falling into the neoliberal model based on macroeconomic indicators of welfare state spending, high-income inequality, low minimum wage, and a low degree of decommodification (Aidukaite 2019). As such, various historic welfare regimes layers and liberal and conservative-corporatist principles co-exist here (Toots and Bachmann 2010). The Baltic welfare system is also defined as a distinct post-communist welfare regime, which represents a mix of neo-liberal and Bismarckian features (Aidukaite 2009). Low levels of social expenditure have been one of the main arguments used to categorise Baltic countries to the liberal welfare regimes. At the same time, Latvia as all the Baltic countries implemented a three-pillar pension system faster and in a more radical manner than most Western European countries.

In general terms, the social security system of Latvia is described as a mixture of elements taken from the basic security (where eligibility is based on contributions or residency, and flat-rate benefits are provided) and corporatist (with eligibility based on labour force participation and earnings-related benefits) models. Elements of the targeted model (in which eligibility is based on a proven need, and the level of benefits is minimal) may be also found in Latvia. Some means-tested benefits are quite extensive, e.g. social assistance benefits for low-income families, housing benefits, a benefit for food and meals, a benefit for purposes related to education and upbringing of children, etc. (Aidukaite 2013).

During the period 2008–2010, Latvia underwent major financial crises. It lost 25% of its Gross Domestic Product, with the unemployment rate reaching 18,7%. To bridge the budget deficit, the Government cuts affected the social security system, particularly pensions, employment and sickness benefits. Sickness benefits were decreased from 52 to 26 weeks, patient payments for health care were increased significantly, whereas the Government's contribution to the second "pillar" of pensions was reduced from 8% to 2%. Employees' compulsory contributions to the national social insurance scheme were also raised from 9% to 11% from January 2011.

The Latvian social security system is financed from the special budget income – the social insurance budget – based on compulsory social insurance contributions. The social insurance system is based on the principle of solidarity as the current contributions paid by employed persons are used for the payment of pensions and other benefits. Social insurance according to the paid social contributions guarantees income upon reaching the retirement age, in case of disability or sickness, during maternity and child care periods, in case of unemployment and in other similar cases.

Some social benefits (unemployment benefits, pensions, sickness, maternity and child benefits) depend on previous earnings and the amount of social insurance contributions. Others are non-contributory, such as the benefit for insuring the guaranteed minimum income level. There are benefits which depend on whether the person is compulsory or voluntarily insured – such as in kind health care benefits. Most contributory and non-contributory benefits are pre-conditioned by a

permanent residency status in Latvia. Since January 2018, significant policy changes occurred in the area of healthcare. According to the latest health care financing reform, access to the full range of state-funded health care services is available to permanent residents subjected to compulsory or voluntary health insurance. However, despite the fact that the amendments came into force on January 2018, due to technical reasons, the new provisions have not been implemented in practice. Moreover, following parliamentary elections in autumn 2018, the new Government formed in early 2019, decided to give up the idea and focus efforts on developing a sustainable model of health financing.

### ***17.1.2 Migration History and Key Policy Developments***

Latvia experienced massive migration turnover and population losses during the twentieth century, mainly due to the two World Wars, the annexation of the country by the Soviet Union, and the resulting population transfers during almost five decades of Soviet regime (Zelče 2011). In the twenty-first century, after the country's accession to the European Union (EU) and the economic crises during the period 2008–2010, emigration from Latvia to other EU Member States has massively increased (Hazans 2019). Latvia has been able to shape its own immigration policies only during the periods of independence (1918–1940, and from 1990 onwards).

From a historical perspective, prior to World War I, Latvia was a land of immigration as part of the Russian Empire. Between 1863 and 1913, the Latvian population increased by 1,287,000, of whom 304,000 individuals (24%) immigrated. During World War I and the Russian civil war, around one million of Latvia's residents moved to other territories (mostly in Russia) as refugees, displaced persons or after being mobilised into armed forces. In only five years, Latvia lost 37% of its population. The country gained independence in 1918 and after the signature of the peace treaty with Russia, nearly 300,000 people returned to Latvia between 1918 and 1928. During the 1930s, the number of foreign farm workers (most of them from Lithuania and Poland) ranged from 12,000 to 40,000 (Zelče 2011). In 1939, Germany "repatriated" almost all Baltic Germans and during the Nazi occupation (1941–1945), the local Jewish population<sup>1</sup> and half of the Roma population was exterminated.

War deaths, Soviet executions and mass deportations to the East, flight to the West,<sup>2</sup> and post-war<sup>3</sup> Soviet policies of mass migration weakened Latvia's position and resulted in the growth of the Russian minority, which accounted for more than

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<sup>1</sup> Between 65–70,000 Jews perished in the Holocaust.

<sup>2</sup> It is estimated that, due to the war, Latvia's population decreased by 300,000–500,000 people (a 25% decrease compared to 1939). Between 1944 and 1953, around 120,000 people fell victim to Soviet terror (Zelče 2011).

<sup>3</sup> Latvia was incorporated into the Soviet Union in 1945.

one-third of the population in 1989 on the eve of independence. Initially, migrants were demobilized Red Army soldiers and their families, internal security personnel and Communist Party bureaucrats. From the early 1960s through the mid-1980s, migrants tended to be workers in All-Union industries, particularly persons with a technical or engineering background, as well as many retired Soviet military officers. The majority of migrants were Russians, Ukrainians, and Belarusians, whose combined share of the population rose from 10.3% in 1935 to 42% in 1989 (Muižnieks 2006). As a result of immigration, the share of ethnic Latvians in Latvia's population dropped from 77% in 1935 to 52% in 1989.

In total, around four million people moved to Latvia between 1951 and 1990, while 1,82 million left the country. The overall migration balance during the Soviet occupation involved 941,000 people. The authorities of the regime explained that immigration was needed because of the constantly increasing need for workers and the low natural growth rate in the population (Zelče 2011). At the end of 1980s, plans to construct a subway system in Riga drew protests from ethnic Latvians. Hence, in 1989, the Government of the Latvian Soviet Socialist Republic approved a plan to stop and regulate migration.<sup>4</sup> When Latvia regained independence in 1991, the share of minorities decreased due to the withdrawal of the Soviet army and ethnic minority return migration in the first half of the 1990s.

According to the 1990 Population Census, the population in Latvia stood at 2,67 million. By 2018, the population of Latvia was of 1,93 million individuals, a decrease by 738,000 since 1990.<sup>5</sup> The twenty-first century has been marked by emigration from Latvia particularly since the country's accession to the EU in 2004 and during the 2008–2010 economic crises that resulted in the emigration of 260,000 individuals from 2008 to 2017, amounting to 13,5% of the population.<sup>6</sup> The economic crises also led to a greater number of Latvian non-citizens opting for the Russian citizenship due to the benefits of an earlier retirement age.<sup>7</sup>

Broadly speaking, the Baltic states have been very sensitive to immigration from outside the European Union and quite stringent about maintaining their ethnic balance, as well as protecting their languages and cultures (Birka 2019). Latvia established an investor visa program, allowing investors from outside the EU to receive a residence permit in exchange for a certain level of investments (real estate,<sup>8</sup> share

<sup>4</sup>Latvijas PSR Ministru padome. (1989). 1989.gada 14.februāra lēmums nr 46, "Par pasākumiem iedzīvotāju skaita nepamatota mehāniskā pieauguma pārtraukšanai un migrācijas procesu regulēšanai Latvijas PSR".

<sup>5</sup>Centrālā statistikas pārvalde (2018). *Latvija 2018. Galvenie statistikas rādītāji*, p.5 [https://www.csb.gov.lv/sites/default/files/publication/2018-05/Nr%2002%20Latvija%20Galvenie%20statistikas%20raditaji%202018%20%2818\\_00%29%20LV.pdf](https://www.csb.gov.lv/sites/default/files/publication/2018-05/Nr%2002%20Latvija%20Galvenie%20statistikas%20raditaji%202018%20%2818_00%29%20LV.pdf). Last accessed 3 May 2020.

<sup>6</sup>OECD Economic Surveys: Latvia 2019. OECD publishing. p.16, [https://read.oecd-ilibrary.org/economics/oecd-economic-surveys-latvia-2019\\_f8c2f493-en#page1](https://read.oecd-ilibrary.org/economics/oecd-economic-surveys-latvia-2019_f8c2f493-en#page1). Last accessed 3 May 2020.

<sup>7</sup>LSM.LV (2017). 10 gadu laikā Krievijas pilsoņu skaits Latvijā pieaudzis par vairāk nekā 28,000, <https://www.lsm.lv/raksts/zinas/latvija/10-gadu-laika-krievijas-pilsonu-skaits-latvija-pieaudzis-par-vairak-neka-28-000.a244201/>. Last accessed 3 May 2020.

<sup>8</sup>In 2014, the value of real estate to receive a temporary residence permit was significantly increased and the number of recipients dropped.

capital, credit institution). During the period 2010–2017, over 17,000 visas were granted and the overwhelming majority of recipients (around 70%) were Russians, followed by Chinese (8,2%) and Ukrainians (8%).<sup>9</sup> Moreover, since Latvia established the asylum procedure in 1998, the number of asylum seekers and persons granted refugee and subsidiary status has been quite small, except for the brief period of EU relocation scheme when Latvia pledged to accept 571 asylum seekers.

Latvia's immigration policy has generally aimed to protect the local workforce and addressing labour shortages via the return of Latvian emigrants is seen as a key solution. Nevertheless, the acute labour force shortage has led the Latvian authorities to adopt several measures in 2017 and 2018, including the start-up visa for individuals developing innovative products, regulations for issuing temporary residence permits to highly qualified specialists and the creation of a list of professions facing a foreseeable lack of labour force.<sup>10</sup> However, the number of third-country nationals with work permits in 2017 was still small: 4029 nationals of Ukraine, 1230 from Belarus and 1095 Russians.<sup>11</sup>

According to the Population Register,<sup>12</sup> on 1 July 2018, Latvia had a population of 2,101,061 individuals, out of which 228,855 were Latvian non-citizens<sup>13</sup> and 92,342 foreign residents. The largest groups of third-country nationals residing in the country are citizens of the Russian Federation (54,258 individuals), Ukraine (7485), Belarus (3318), India (1708), and Uzbekistan (1556). From 2007 to 2017, the number of Russian citizens increased by nearly 28,000.<sup>14</sup> This significant increase occurred particularly during the economic crises in 2008–2010, when many non-citizens opted for Russian citizenship due to lower retirement age.<sup>15</sup> The devaluation of the Russian rouble halted the trend.

<sup>9</sup> OCCRP (2018). Latvia's Once Golden Visas Lose their Shine – But Why?, 5 March, <https://www.occrp.org/en/goldforvisas/latvias-once-golden-visas-lose-their-shine-but-why>. Last accessed 3 May 2020.

<sup>10</sup> Saeima (2017). *Grozījumi Imigrācijas likumā*, <https://likumi.lv/ta/id/288742-grozijumi-imigracijas-likuma>. Last accessed 3 May 2020.

<sup>11</sup> LR Saeima. (2018). *Imigrācijas loma darbaspēka nodrošinājumā Latvijā. Sintēzes ziņojums*, [https://www.saeima.lv/petijumi/Imigracijas\\_loma\\_darbaspēka\\_nodrošinajums\\_Latvija-2018\\_aprīlis.pdf](https://www.saeima.lv/petijumi/Imigracijas_loma_darbaspēka_nodrošinajums_Latvija-2018_aprīlis.pdf). Last accessed 3 May 2020.

<sup>12</sup> Population Register (*Iedzīvotāju reģistrs*) (2018). Latvian residents by nationality (*Latvijas iedzīvotāju sadalījums pēc valstiskās piederības*), [https://www.pmlp.gov.lv/lv/assets/documents/statistika/Iedz%C4%ABvt%C4%81ju%20re%C4%A3istrs%20st.%20uz%2001072018/ISVP\\_Latvija\\_pec\\_VPD.pdf](https://www.pmlp.gov.lv/lv/assets/documents/statistika/Iedz%C4%ABvt%C4%81ju%20re%C4%A3istrs%20st.%20uz%2001072018/ISVP_Latvija_pec_VPD.pdf). Last accessed 10 November 2018.

<sup>13</sup> Non-citizens are a special category of people - former USSR citizens who were resident in Latvia on 01.07.1991 and have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons.

<sup>14</sup> LSM.LV (2018). During 10 Years the Number of Citizens of Russia in Latvia has increased by 28,000, 22 July, <https://www.lsm.lv/raksts/zinas/latvija/10-gadu-laika-krievijas-pilsonu-skaits-latvija-pieaudzis-par-vairak-neka-28-000.a244201/>. Last accessed 3 May 2020.

<sup>15</sup> Baltic Institute of Social Sciences (2013). *Par trešo valstu valstspiederīgo un Latvijas nepilsoņu viedokli par Latvijas pilsonību un iemesliem, kas veicina vai kavē pilsonības iegūšanu*, <https://www.pmlp.gov.lv/lv/sakums/jaunumipublikacijas/p%C4%93t%C4%ABjumi/2013.gada%C4%93t%C4%ABjums-par-tre%C5%A1lo-valstu-valstspieder%C4%ABgo-un-latvijas->

There are two types of residence permits – temporary and permanent - for foreigners immigrating to Latvia. A residence permit is necessary if a foreigner is willing to reside in Latvia for more than 90 days within half a year counting from the first day of entry. A temporary residence permit is issued for one year and can be re-registered every year depending on the purpose of entry.<sup>16</sup> Permanent residence permit is issued for five years. A foreigner can apply for a permanent residence permit if he/she has continuously (with the exceptions provided for in the Immigration Law) resided in Latvia for five years with a temporary residence permit, as well as in other cases (for example, a minor child or a child in the custody of a Latvian citizen, a non-citizen or of a foreigner, who has received a permanent residence permit, as well as other family members as set in the law).<sup>17</sup> To receive a permanent residence permit, a foreigner has to submit an application to the Office of Migration and Citizenship Affairs. In most cases, when submitting the application documents for a permanent residence permit, foreigners must show a certificate on state language proficiency evidencing the basic knowledge of state language.<sup>18</sup>

As for the Latvian diaspora, in July 2018, 181,545 Latvian citizens lived abroad. The majority of them resided in the United Kingdom (73,613 individuals), Ireland (20,343) and the United States (15,316), followed by Canada and Australia. In 2018, 4457 Latvian citizens resided in Russia.

## 17.2 Migration and Social Protection in Latvia

In Latvia, most social benefits (unemployment, health, pensions, maternity/paternity benefits) are available to socially ensured Latvian and foreign nationals. According to the general principle, socially insured persons are those who are employed, self-employed and actually make social insurance contributions. Additionally, specific groups of persons are insured by the state (e.g. those in maternity/paternity leave, persons receiving unemployment benefits, disabled persons, etc.) and some can join the social insurance scheme voluntarily, including spouses of self-employed who voluntary joined social insurance.<sup>19</sup> Some social insurance benefits are pre-conditioned by permanent residency. Thus, all state social

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<sup>16</sup> [nepilso%C5%86u-viedokli-par-latvijas-pilson%C4%ABbu-un-imesliem,-kas-veicina-vai-kav%C4%93-pilson%C4%ABbas-ieg%C5%AB%C5%A1anu-\(pdf\).pdf](http://www.pmlp.gov.lv/lv/sakums/pakalpojumi/iecelosana-lv/uzturesanas-atlaujas/uzturesanas-terms.html). Last accessed 10 November 2018.

<sup>17</sup> See: <http://www.pmlp.gov.lv/lv/sakums/pakalpojumi/iecelosana-lv/uzturesanas-atlaujas/uzturesanas-terms.html>. Last accessed 10 November 2018.

<sup>18</sup> Immigration Law (*Imigrācijas likums*), Section 24, 01.05.2003, <https://likumi.lv/ta/id/68522-imigracijas-likums>. Last accessed 3 May 2020.

<sup>19</sup> Rules of the Cabinet of Ministers No. 564, Section 35, 21.06.2010, <https://likumi.lv/ta/id/212441-uzturesanas-atlauju-noteikumi>. Last accessed 3 May 2020.

<sup>19</sup> Saeima, Law on State Social Insurance (*Par valsts sociālo apdrošināšanu*), Section 5, 6, adopted on 01.01.1998, <https://likumi.lv/doc.php?id=45466>. Last accessed 3 May 2020.

allowances (including childbirth allowance and childcare benefit, state social security benefits, funeral benefit) are available to Latvian citizens, Latvian non-citizens, foreigners and stateless persons who permanently reside in Latvia.<sup>20</sup>

### **17.2.1 Unemployment**

The unemployment benefit is financed from the state social insurance employment special budget.<sup>21</sup> The benefit is granted to Latvian citizens and foreigners who are officially registered as unemployed persons. To qualify as eligible applicants, individuals must have worked for at least one year and have paid social insurance contributions for unemployment for at least 12 months during the previous 16 months period. Persons who have recovered the capacity to work after a disability and persons who have taken care of a child with disability up to 18 years of age have the right to unemployment benefits even if their social insurance contributions have not been paid or have been paid for less than 12 months. Those who receive unemployment benefits are required to be actively involved in job search activities.

In order to apply for the benefit, individuals have to submit an application to the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*). The amount of the unemployment benefit depends on previous earnings. It is calculated based on the average income from which unemployment contributions have been made during the last 12 months, not counting the last two months before the job loss. The benefit is paid for maximum nine months (full amount during the first three months, 75% during the following three months, and 50% during the last three months).

Unemployment benefits can be exported if recipients decide to move to another EU Member State with an aim of searching for a job. In this case, the person can continue to receive the benefit up to a maximum of six months. However, the unemployment benefit can be lost if individuals do not fulfil the required duties, such as active job search without justification. The export of the benefit to non-EU countries is not possible. The bilateral social agreements signed with Russia,<sup>22</sup> Ukraine,<sup>23</sup> and

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<sup>20</sup>Saeima, Law on State Social Allowances (*Valsts sociālo pabalstu likums*), adopted on 31.10.2002, Section 3.4: <https://likumi.lv/doc.php?id=68483> Section 3.4 <https://likumi.lv/doc.php?id=68483>. Last accessed 3 May 2020.

<sup>21</sup>Saeima, Law on Unemployment Insurance (*Par apdrošināšanu bezdarba gadījumam*), adopted on 25. 11. 1999, Section 4: <https://likumi.lv/doc.php?id=14595>. Last accessed 3 May 2020.

<sup>22</sup>Agreement on Cooperation in Social Insurance Area between the Republic of Latvia and Russian Federation (*Latvijas Republikas un Krievijas Federācijas līgums par sadarbību sociālās drošības jomā*), 18.12.2007, <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/738>. Last accessed 3 May 2020.

<sup>23</sup>Agreement between the Republic of Latvian and Ukraine of Cooperation in Social Insurance Area (*Par Latvijas Republikas un Ukrainas līgumu par sadarbību sociālās drošības jomā*), 19.05.1998, <https://likumi.lv/doc.php?id=48170>. Last accessed 3 May 2020.

Belarus<sup>24</sup> grant access to unemployment benefits to the nationals of these countries residing in Latvia and to Latvian nationals residing in these countries.

## 17.2.2 *Health Care*

The health care system is financed from the state general income budget, the social insurance contribution for health care services, health insurance contributions, patients' co-payments, EU funds and other foreign financial instruments, local government co-payments, and income of state and local medical institutions.<sup>25</sup> The provision of state paid health care services is divided into the following categories:

- Emergency medical assistance that is available to all nationals and foreigners.
- The minimum of state paid medical assistance and state funded health care is available to all socially insured persons and all Latvian citizens, Latvian non-citizens, foreigners with a permanent residence permit, stateless persons whose status was granted by Latvia, refugees, persons with a subsidiary protection status, and asylum seekers. The minimum of state paid medical care includes emergency medical assistance, childbirth assistance, family doctor's services, and state health care in case of treatment of diseases that might be dangerous for public health care. Additionally, the spouse of a Latvian citizen and of a non-citizen with a temporary residence permit has the right to childbirth assistance in Latvia. State funded health care in addition to the minimum state paid medical assistance include primary, secondary and tertiary health care services, medication and medical devices.<sup>26</sup>

All employed and self-employed persons who make social insurance contributions, and spouses of self-employed persons who voluntary joined the social insurance scheme have the right to sickness cash benefits, regardless of their nationality. The sick leave certificate is issued by a doctor or doctor's assistant.<sup>27</sup> The first 10 days of sickness are paid by the employer. Starting with the 11th day of sickness, a person has the right to apply for the state paid sickness benefit if social insurance contributions have been made at least three months during the last six months before

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<sup>24</sup> Agreement between the Republic of Latvia and the Republic of Belarus on Cooperation in Social Insurance area (*Par Latvijas Republikas un Baltkrievijas Republikas līgumu par sadarbību sociālās drošības jomā*), 24.12.2008, <https://likumi.lv/doc.php?id=185629>. Last accessed 3 May 2020.

<sup>25</sup> Saeima, Health Care Funding Law (*Veselības aprūpes finansēšanas likums*), adopted on 01.01.2018, Section 4, <https://likumi.lv/ta/id/296188-veselibas-apruples-financesanas-likums>. Last accessed 3 May 2020.

<sup>26</sup> Saeima, Healthcare Funding Law (*Veselības aprūpes likums*), adopted on 14.12.2017, Section 10,11, transitional provisions Section 5, <https://likumi.lv/doc.php?id=296188>. Last accessed 3 May 2020.

<sup>27</sup> Saeima, Law on Maternity and Sickness Insurance (*Par maternitātes un slimības apdrošināšanu*), adopted on 6.11.1995, Section 12, <https://likumi.lv/doc.php?id=38051>. Last accessed 3 May 2020.

the sickness occurred or for at least six months during the last 24 months. The State Social Insurance Agency grants the sickness benefit in the amount of 80% of average contributions salary calculated based on the payments made during the last 12 months. The sickness benefit can be paid for a maximum of 26 weeks (it can be exceptionally extended to 52 weeks). The sickness cash benefit cannot be exported to other countries.

The state social security disability allowance (invalidity benefit) can be granted to permanent residents who are over 18 years old, have resided in Latvia for at least 60 months (out of which the last 12 months continuously), are unemployed at the time of claiming the allowance and their disability has been certified by the State Medical Commission for the Assessment of Health Condition and Working Ability. Foreigners with a temporary residence permit are not entitled to this allowance.<sup>28</sup> The monthly amount of the invalidity benefit is flat rate, depending on the disability category.<sup>29</sup> The payment of the allowance is discontinued if recipients leave the country for permanent residence abroad.<sup>30</sup> The bilateral social security agreements signed with Russia, Ukraine, and Belarus grant access to the nationals of these countries residing in Latvia and Latvian citizens residing in these countries to cash benefits in case of sickness and invalidity benefits.

### 17.2.3 *Pensions*

The Latvian public pension scheme complements the pay-as-you-go notional defined contribution system. It is based on contributory social insurance and length of service.<sup>31</sup> In 2018, the retirement age was 63,3 years and the minimum length of service was of 15 years. The pension system is based on three pillars. The first pillar is the state compulsory unfunded or non-accumulated pension scheme managed by the state. All those who pay social contributions are included in this pillar. The

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<sup>28</sup> Saeima, Law on State Social Allowances (*Valsts sociālo pabalstu likums*), adopted on 31.10.2002, Section 13, <https://likumi.lv/doc.php?id=68483>. Last accessed 3 May 2020.

<sup>29</sup> Cabinet of Ministers, Regulations Regarding the Amount of the State Social Security Benefit and Funeral Benefit, Procedures for the Review thereof and Procedures for the Granting and Disbursement of the Benefits

(*Noteikumi par valsts sociālā nodrošinājuma pabalsta un apbedīšanas pabalsta apmēru, tā pārskatīšanas kārtību un pabalstu piešķiršanas un izmaksas kārtību*), adopted on 22.12.2009, Section 2, <https://likumi.lv/ta/id/202850-noteikumi-par-valsts-sociala-nodrošinajuma-pabalsta-un-apbedisanas-pabalsta-apmeru-ta-par-skatsanas-kartibu-un-pabalstu-pieskir>. Last accessed 3 May 2020.

<sup>30</sup> Saeima, Law on State Social Allowances (*Valsts sociālo pabalstu likums*), adopted on 31.10.2002, Section 13, <https://likumi.lv/doc.php?id=68483>. Last accessed 3 May 2020.

<sup>31</sup> Saeima, Law on State Social Allowances (*Valsts sociālo pabalstu likums*), adopted on 31.10.2002, Section 9, <https://likumi.lv/doc.php?id=68483> (last accessed 3 May 2020) and Saeima, Law on State Pension (*Likums par valsts pensijām*), adopted on 2.11.1995, Section 3, <https://likumi.lv/doc.php?id=38048> (last accessed 3 May 2020).

contributions are used to pay the pensions of the existing generation of pensioners. The second pillar is the state-funded pension scheme managed by chosen fund managers, invested into financial market and saved for the pension of the specific contributor. The third pillar is a private voluntary pension scheme which ensures the possibility for every individual to create additional savings for his/her pension in the private pension funds.<sup>32</sup>

The amount received depends on the pension capital accrued from 1 January 1996 until the moment of the application, the average social insurance amount from 1 January 1996 until 31 December 1999, length of insurance until 31 December 1995 and the time period for which the disbursement of the old-age pension was planned from the year of granting the old-age pension.<sup>33</sup> Certain credited periods are taken into account for the entitlement to pensions (periods of inactivity of disabled persons, periods of receipt of unemployment, sickness, maternity or parental benefits, period of nursing a child until the age of 1,5 years, periods of inactivity of spouses residing abroad with their partners who are on a diplomatic/consular/military duties, etc.). For Latvian citizens, certain periods are recognised prior to 1 January 1991, such as the compulsory military service, studies at higher education institutions, child care by the mother until the child reached 8 years of age, and periods of political repression (e.g. when Latvian nationals were sent to Soviet forced labour (Gulag) camps), etc.

Latvian and foreign nationals can export pensions when moving to another EU or European Economic Area (EEA) country. Latvian nationals also have the right to export pensions to a non-EU country with which there is a bilateral social security agreement in place – for instance, Russia, Ukraine, Belarus, Australia, and Canada. When a person decides to permanently move abroad, s/he has to inform the State Social Insurance Agency and submit an application for continuation or renewal of the payment of pension indicating the new place of residence. The application has to be resubmitted annually adding notarised confirmation that the person is alive.<sup>34</sup>

Only Latvian nationals and foreigners with permanent residence permits who have resided in Latvia for at least 60 months (out of which the last 12 as permanent residents) have the right to claim a universal non-contributory pension (state social security benefit) if they do not qualify for a contributory pension or for an insurance compensation for damages related to an occupational accident or occupational disease. To become eligible, they must be unemployed and have reached the retirement age. If a person receives a pension from another state, which is below the amount of

<sup>32</sup> Saeima, Law On State Funded Pensions (*Valsts fondueto pensiju likums*), adopted on 17.02.2000, <https://likumi.lv/doc.php?id=2341>. Last accessed 3 May 2020.

<sup>33</sup> Saeima, Law on State Pension (*Likums par valsts pensijām*), adopted on 02.11.1995, <https://likumi.lv/doc.php?id=38048>. Last accessed 3 May 2020.

<sup>34</sup> Cabinet of Ministers, Procedures for the Payment of the State Pensions Granted in the Republic of Latvia to Persons After Departure for Permanent Residence in Foreign States (*Latvijas Republikā piešķirto valsts pensiju izmaksas kārtība personām pēc izbraukšanas uz pastāvīgu dzīvi ārvalstīs*), adopted on 27.06.2006, <https://likumi.lv/doc.php?id=138903&from=off>. Last accessed 3 May 2020.

the state social security benefit (EUR 64,03), the state social security benefit is reduced by the amount, which complies with the amount of the pension granted by the other state.

### 17.2.4 Family Benefits

Maternity, paternity and parental benefits are available to employed and self-employed (and spouse of self-employed) Latvian nationals, as well as EU and non-EU citizens who are socially insured in Latvia or have voluntarily joined the social insurance scheme. The benefits scheme is based on compulsory social insurance. If a Latvian national is socially insured in another EU or non-EU state, he/she cannot claim the benefits from Latvia.

The maternity benefit is paid before and after the childbirth for a maximum period of 140 days. The amount of the benefit is 80% of the average insurance contributions salary of the applicant, calculated for a period of 12 months ending two months before the month in which the pregnancy leave began. The paternity benefit is paid to the father no later than two months after the child is born. The benefit is granted for 10 days and the amount is 80% of the average insurance contributions salary of the applicant, calculated for a period of 12 months ending two months prior to the month in which the paternity leave has begun.<sup>35</sup> The parental benefit is paid to socially insured persons – mothers or fathers - taking care of a child. Claimants must be employed on the day they are granted the benefit. If a person takes the parental leave until the child is one years old, the amount is 60% of recipient's average wage subject to insurance contributions. If the leave is until the child reaches the age of 1.5, the amount is 43.75% of the recipient's average wage subject to insurance contributions. When the recipient of the parental benefit resumes work or earning income as a self-employed, the amount received is 30% of the granted benefit.

The child benefit is available to individuals who are permanent residents in Latvia, independently if they are socially insured or not.<sup>36</sup> Although there are no specific conditions regarding the country of birth or nationality of the child, it is required that the child has a personal identification number granted in Latvia. This number is granted to all Latvian residents (temporary and permanent).<sup>37</sup> Child benefits are financed from the general state budget. The child care benefit and allowance can be received at the same time, if the maternity benefit has not been granted for

<sup>35</sup> Saeima, Law on Maternity and Sickness Insurance (*Likums par maternitātes un slimības apdrošināšanu*), adopted on 19.06.1998, Section 10.<sup>1</sup>–10.<sup>2</sup>–10.<sup>3</sup>, <https://likumi.lv/doc.php?id=38051>. Last accessed 3 May 2020.

<sup>36</sup> Saeima, Law on State Social Allowances (*Valsts sociālo pabalstu likums*), adopted on 31.10.2002, Section 4, <https://likumi.lv/doc.php?id=68483>. Last accessed 3 May 2020.

<sup>37</sup> Saeima, Law on Population Register (*Iedzīvotāju reģistra likums*), adopted on 27.08.1998, <https://likumi.lv/doc.php?id=49641>. Last accessed 3 May 2020.

the same child for the same period of time. These benefits are granted to a person who is taking care of a child for a specific period. Therefore, the parents have to agree on who will receive both the parental benefit and allowance for child care, as both benefits are granted to one of the parents.

The bilateral social security agreements signed with Russia, Ukraine, and Belarus grant access to family benefits to nationals of these countries residing in Latvia and to Latvian nationals residing in these countries. The agreement with Russia provides access to maternity/paternity benefit, child care allowance, child birth allowance, and family state benefit. The agreement with Ukraine provides access to maternity/paternity benefit, child care benefit, child birth benefit, and family state allowance. The agreement with Belarus provides access only to maternity and paternity benefits.

### ***17.2.5 Guaranteed Minimum Resources***

The benefit for ensuring the guaranteed minimum income level is a cash benefit granted to families or individuals who are in need and do not gain sufficient income.<sup>38</sup> The benefit is granted by the social service of the local governments. The minimum amount is determined by the Government and financed from the state budget. Only permanent residents are entitled to claim this benefit. This includes EU and non-EU nationals and their family members who are permanent residents and have resided in Latvia at least three months or six months if they arrived in Latvia for employment purposes and can prove that they are searching for job. Upon granting the benefit, the social service signs an agreement with the beneficiary on the activities that the later has to undertake in order to improve own or family social situation.<sup>39</sup> If any of the recipients of the benefit does not carry out the agreement, the amount of the granted benefit may be reduced by the guaranteed minimum income level of the person not carrying out the duties of participation.<sup>40</sup> The bilateral social security agreements signed with Russia, Ukraine, and Belarus cover

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<sup>38</sup> Saeima, Law on Social Services and Social Assistance (*Sociālo pakalpojumu un sociālās palīdzības likums*), adopted on 31.10.2002, Section 1, <https://likumi.lv/ta/id/68488-socialo-pakalpojumu-un-socialas-palidzibas-likums#p36>. Last accessed 3 May 2020.

<sup>39</sup> Cabinet of Ministers, Procedures for the Calculation, Granting, Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level and for the Entering into an Agreement Regarding Participation (*Kārtība, kādā aprēķināms, piešķirams, izmaksājams pabalsts garantētā minimālā ienākumu līmeņa nodrošināšanai un slēdzama vienošanās par līdzdarbību*), adopted on 17.06.2009, <https://likumi.lv/doc.php?id=193738>. Last accessed 3 May 2020.

<sup>40</sup> Cabinet of Ministers, Procedures for the Calculation, Granting, Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level and for the Entering into an Agreement Regarding Participation (*Kārtība, kādā aprēķināms, piešķirams, izmaksājams pabalsts garantētā minimālā ienākumu līmeņa nodrošināšanai un slēdzama vienošanās par līdzdarbību*), adopted on 17.06.2009, Section 17, 18, <https://likumi.lv/doc.php?id=193738>. Last accessed 3 May 2020.

access to the guaranteed minimum benefit for the nationals of these countries residing in Latvia and for Latvian nationals residing in these countries.

### 17.3 Conclusions

The access to the Latvian social security benefits is generally based on the principle of employment, social insurance contributions, and permanent residence. Most social benefits and services are available to socially insured permanent residents. At the same time, the state offers minimum protection also to non-insured permanent residents. Foreigners with temporary residence permits who are not socially insured are the least socially protected group. There have been no major political debates on access of foreigners to the social security scheme in general.

Along with other Baltic states, Latvia has been very sensitive to immigration from outside the European Union and stringent about maintaining their ethnic balance and protecting its language and culture. This sensitivity reflects the region's contentious history with the Soviet Union, including population transfers and enduring effects of Russification policies. Baltic states have been less than successful in managing integration and social cohesion issues. The Migrant Integration Policy Index (MIPEX) has continuously noted the anti-immigrant sentiment that exists in all three Baltic countries (Birka 2019). Despite increasing shortages of labour force in recent years, immigration policy has not been a priority of recent Latvian Governments. Facilitating re-emigration is seen as a key measure to address these issues.

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# Chapter 18

## Migrants' Access to Social Protection in Lithuania



Romas Lazutka and Jekaterina Navicke

### 18.1 Overview of the National Social Security System and Main Migration Features in Lithuania

This section aims to contextualize the national welfare regime, the main migration patterns and policy developments in Lithuania. The focus is on the welfare provisions for different groups based on citizenship and residence, i.e. for resident nation-als, non-national residents, and non-resident nationals.

#### 18.1.1 *Main Characteristics of the National Social Security System*

Lithuania has designed its social security system in a very short period of time, after restoring its independence in 1990. Different factors influenced the formation of the new social security system: inheritance from the Soviet period, the direct or indirect influence of foreign experience, institutions and experts who advised on social security reform issues, the necessity to adapt the social security system to the market oriented economy and democratic political system. Under the influence of the above mentioned factors, a new independent social security system was formed. The Lithuanian social security model does not completely correspond to any of the well-known classifications of welfare regimes, as it counts with mixed features of different welfare models (Medaikis 1998).

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On the one hand, it can be classified as Bismarckian as it heavily relies on social insurance principles (Aidukaite et al. 2012). Until recently, the share of social contributions was 75% of the total financing as compared to around 55% on average in the European Union (EU).<sup>1</sup> The main social risks are covered by insurance schemes: disability and old-age pensions, sickness, maternity, unemployment, health, work accidents and occupational disease. Only family benefits, social care services, means-tested social assistance, non-contributory social and state pensions are covered by non-contributory social protection schemes.

On another hand, researchers argued that Lithuania has developed the neoliberal model (Lazutka et al. 2018). The macro-economic performance of Lithuania was at a high level after joining the EU in 2004. Lithuania's annual disposable income per capita is now close to that of Slovenia and the Czech Republic, the most advanced countries in Central East Europe (*ibid.*).

However, the impressive macro-economic performance of the country has so far failed to reduce, or has even exacerbated a number of social problems that are threatening its social and demographic sustainability (Sommers and Woolfson 2014). Lithuania is often criticized by major international institutions for disproportionately high effective taxation on labour, low public revenue, insufficient measures against poverty and inequality (e.g. OECD 2018). The system is characterized by a small share of employees' compensation in the national income, low income redistribution via tax-cash benefits system, low expenditure on social protection, and very high rates of poverty and inequality in the context of the EU. The "small government" and "cheap labour" rhetoric still prevails in the political debate on maintaining the country's economic competitiveness. Not surprisingly, Lithuania was the most rapidly depopulating country in the EU within the period of 2004–2014, losing about 1% of population annually, mostly due to emigration (Lazutka et al. 2018).

Social security is administered mainly by several institutions operating at the national level, i.e. the Ministry of Social Security and Labour, the State Social Insurance Council and the State Social Insurance Fund Board with its local offices, the National Employment Service with its local offices, the State Patients Fund, etc. Municipal social assistance units are responsible for means tested social assistance, categorical family assistance benefits and social care services. Migration process is handled by the Department of Migration. The State Social Insurance Fund Board, the State Patients Fund, and municipalities also provide services for migrants in the field of social protection.

The Republic of Lithuania has international bilateral agreements on social security with neighboring countries and states that have historically been in the same political and economic space, i.e. Belarus, Ukraine, Moldova. The agreements with these countries are applicable to all social transfers, including a provision on pension payments. The terms of the latter agreement also apply to Canada. The agreement with Russia is applied only to pensions. There are diplomatic notes

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<sup>1</sup> Eurostat (2019). ESSPROS data by scheme, own calculations. Eurostat Database: <https://ec.europa.eu/eurostat/data/database>

concerning the transfer of social security benefits for Lithuanian citizens who acquired rights to them in the U.S. and currently reside in Lithuania. Former bilateral agreements on social security with Latvia, Estonia, Poland, Czech Republic, and the Netherlands no longer applied after Lithuania joined the EU. Instead, the Regulation No 883/2004 on the coordination of social security systems applies.

### **18.1.2 Migration History and Key Policy Developments**

Lithuania faced high levels of emigration in its recent history. The rapid out-migration from Lithuania to the Russian Federation started following the restoration of independence in 1990. It was influenced by changing military, political and public administration structures, when many Russian families decided to leave the country (Thaut 2009). Emigration of Lithuanians also intensified in the context of political, social, and labour market transition (Kuzmickaite 2003). The period was marked by high unemployment and low salaries, low labor protection and uncertainty about the future. Hence, Lithuania's labour emigration in the 1990s can be understood as a strategy to protect against the risks and to take advantage of the opportunities associated with the country's economic transition (Thaut 2009). The primary destinations of labour emigration in the 1990s were the United States, Germany, and Israel (OECD 2003). Other important destinations of labour emigrants included the United Kingdom, Spain, Denmark, Sweden and Ireland. According to Statistics Lithuania, the largest number of emigrants were between the ages of 20 and 29, followed by those 30 to 39 years old.<sup>2</sup> As Lithuania was outside of the EU, these flows were largely illegal or semi-legal and emigrants were not covered by social security schemes in the countries of destination. Data of Statistics Lithuania (ibid.) reveal a negative net migration of more than 20,000 emigrants per year over the decade of the 1990s.

Lithuania's EU accession in 2004 opened new opportunities for intra-EU mobility. Lithuanian labour emigration is taking place within a new context and at a greater level than that of the 1990s. According to the neo-classical economic theory, the relative wage and unemployment differentials between EU countries play a primary role in encouraging Lithuanian labour emigration. For example, net average earnings of a married couple with two children were 8 times higher in EU15 than in Lithuania in 2004. In 2015, this ratio reduced to 4.4, but remains high for attracting emigrants from Lithuania.<sup>3</sup> Social security standards are also in general higher in the countries of destination compared to Lithuania.

The network theory of international migration adds a second argument for high rates of Lithuanians' out-migration to EU15 countries. Increasing networks of

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<sup>2</sup> Statistics Lithuania (2006). *International Migration of Lithuanian Population*. Vilnius: Statistics Lithuania.

<sup>3</sup> Eurostat (2019). Annual net earnings [earn\_nt\_net]. Eurostat Database: <https://ec.europa.eu/eurostat/data/database>. Last update: 05-02-2019.

emigrants facilitate others in finding jobs, obtaining housing and in decreasing the costs and risks of migration (Martin et al. 2006). The Lithuanian diaspora, particularly in the UK and Ireland, lessen concerns about leaving the familiar culture, as well as decrease feelings of dislocation upon arrival in the destination country (Thaut 2009). Diaspora networks may also serve as informal protection against social risks, while social protection rights are being coordinated within the EU.

As a result, the total Lithuanian population decreased from 3.706 million people at its peak in 1992 to 2.794 million on 1 January 2019.<sup>4</sup> In 27 years' time, Lithuania lost around 25% of its population. Should the current trend remain unchanged, the population in Lithuania will only be 2.4 million in 2030, which represents another 14% decline compared to 2019.<sup>5</sup>

Nevertheless, the migration patterns have recently started to change. In 2018, 32,200 residents of Lithuania emigrated, which is 33% less than in 2017. The number of emigrants per thousand inhabitants has fallen from 16.9 (in 2017) to 11.5 (in 2018). 28,900 people immigrated to Lithuania in 2018. The number of immigrants increased by 1.4 times compared to 2017. 57% of all immigrants are citizens of the Republic of Lithuania, who returned to Lithuania. Nearly half of foreign immigrants were Ukrainians, 26% Belarusians, and 6% Russian citizens. Compared to 2017, in 2018, the number of immigrants from Ukraine increased by 32%, Belarus by 20%, and Russian citizens by 19% (Gudavičius 2019). Decrease of unemployment rate and increase of wages were among the major factors. Brexit may have added an extra argument for return migration. Moreover, some Lithuanian employers are increasingly turning to recruit cheaper labour from Ukraine and Belarus to fill Lithuania's emigration induced labour shortages. Workers from these non-EU countries do not benefit from free movement, but they can work in Lithuania if the country's employers go through the proper procedures. Social protection of those immigrants may become an issue for the national social policy in the future.

By 2004, Lithuania had fully harmonized its legislation on migration in line with the EU acquis and is following common rules on EU social security coordination. The most recent Strategy for the Demographic, Migration, and Integration Policy for 2018–2030 was adopted in September 2018.<sup>6</sup> The main objective of the Strategy is to ensure a positive population change and a balanced age structure. To ensure proper management of migration flows, the Strategy provides for encouraging return migration and a balanced arrival of foreigners to satisfy national interests. The Strategy also sets out to improve the economic welfare, social security, and psychological/emotional well-being of Lithuanian emigrants, strengthen their bond with the country and living environment, and pursue an effective diaspora policy.

<sup>4</sup> StatisticsLithuania(2019).<https://osp.stat.gov.lt/statistiniu-rodikliu-analize?hash=103cad31-9227-4990-90b0-8991b58af8e7#/>

<sup>5</sup> Eurostat (2019). Population on first January by age, sex and type of projection [proj\_15npms]. Eurostat Database: <https://ec.europa.eu/eurostat/data/database>. Last update: 05-02-2019.

<sup>6</sup> Seimas (2018). Strategy for the Demographic, Migration, and Integration Policy for 2018–2030. 20 September 2018. [https://www.lrs.lt/sip/portal.show?p\\_r=119&p\\_k=2&p\\_t=260865](https://www.lrs.lt/sip/portal.show?p_r=119&p_k=2&p_t=260865)

## 18.2 Migration and Social Protection in Lithuania

The conditions under which Lithuanian and foreign citizens can access social security in Lithuania vary depending on the type of benefit. With some exceptions, nationality and period of prior residence are not among eligibility criteria and the general procedures for accessing social security are the same for all individuals. Because of the prevailing contributory nature of social protection in Lithuania, in most cases, the right to social benefits is linked to individuals' employment status and insurance record. Nationality and length of residency are not substantial factors for the right to social protection in the country. Nevertheless, agencies administering residence permission (the Department of Migration) and work permission (the Employment Service) are involved in the process of social protection of migrants together with the other social security agencies. On the other hand, non-resident nationals are entitled to benefits from Lithuania under the EU social security coordination framework or on the basis of bilateral social security agreements with third countries.

### 18.2.1 *Unemployment*

Unemployment protection is regulated by the Law on State Social Insurance (1991). The system is based on social insurance principles, which is financed by social insurance contributions paid to the Public Social Insurance Fund (there is no unemployment assistance scheme in Lithuania). Employees and self-employed, both nationals and foreigners, who reside and work in Lithuania are compulsory covered by the scheme. They are eligible for unemployment benefits on the same terms. Nationals residing abroad cannot claim unemployment benefits from Lithuania. Inactive people are not allowed to join the unemployment insurance scheme voluntarily.

There is no requirement for a minimum period of residence in the country to access unemployment benefits. However, there is a minimum period of insurance required, i.e. 12 months during the last 30 months. Periods of contributions in different EU countries are aggregated and this aggregation rule is also included in the bilateral agreements with Belarus, Ukraine and Moldova. Benefits are paid by the country where the claimant is insured at the moment of application.

The maximum duration for which claimants can receive unemployment benefits is 36 weeks. Beneficiaries have to be registered with the national authorities as job-seekers, regularly prove job search and be available for work. Failing to cooperate with the employment services and/or actively look for a job (e.g. not accepting suitable job offers, failure to report to the authorities, not attending the trainings) can lead to the permanent revocation of the benefit.

Nationals who decide to move abroad can export unemployment benefits in accordance to the rules of social protection coordination in the European Economic

Area (EEA) and EU - regulation No 883 (Clause 64). Equally, benefits may be exported for non-EU residents if they decide to permanently move abroad. Export of unemployment benefits to other non-EU/EEA countries are allowed on the basis of bilateral agreements. The agreements that Lithuania has signed with Moldova, Ukraine and Belarus foresee an aggregation of the entitlement periods and the payment of benefits according to the law of the country of residence. In all the above cases, benefits may be conditionally exported for up to three months, i.e. the claimant has to be registered as a jobseeker at the local employment office of the host country. After three months, unemployed are allowed to apply for an extension of the benefit payment for extra three months.

### **18.2.2 Health Care**

The Law on Health System (1994)<sup>7</sup> describes the structure and main principles of the national health system organized in two levels: national and local. Institutions of health care are subordinated either to municipalities or the Ministry of Health. Private health sector is limited, particularly in the sphere of inpatient care. Since 2008, the National Health Insurance Fund (NHIF) has increasingly been contracting private providers for specialist outpatient care (Jankauskienė and Medaiskis 2014). The health system is funded by the NHIF through a national health insurance scheme based on compulsory participation (Murauskienė et al. 2013). A major source of financing are the compulsory health insurance contributions. There are other allocations from the State budget and direct payments by patients.

All national citizens who are able to work (including economically inactive) are mandatory covered by the national health insurance system and are required to pay contributions. Economically inactive because of age, poor health or education are insured by the state via subsidies from the State budget to the NHIF. EU and non-EU citizens permanently living in Lithuania are covered by the national healthcare insurance on the same conditions as national residents. Non-EU citizens who have a temporary residence permit in Lithuania and work in Lithuania or are registered as unemployed, as well as their family members, are covered too. EU and non-EU nationals without permanent residence are provided with emergency medical care only. Lithuanian citizens residing abroad are not covered by the Lithuanian healthcare system for sickness benefits in kind. They are covered according to the rules of coordination of social protection in the EEA and the EU (Regulation No 883). Lithuanians can receive non-emergency health care services in the others countries only with permission of the Ministry of Health when national medical institutions are not able to provide adequate treatment. The NHIF covers the costs of treatment

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<sup>7</sup>The Law on Health System of the Republic of Lithuania (1994). *Valstybės žinios*, 1994-08-17, Nr. 63-1231. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5905/JTsmWIBhW>

on such occasions. The NHIF also covers medical care for Lithuanian pensioners residing in the others EU countries.

Full costs of medical treatment are paid directly by the NHIF. However, there are patient charges and patients have to cover the costs of pharmaceutical products in case of outpatient treatment. Part of these costs for some categories of patients are covered by the health care scheme. People who do not pay compulsory contributions and are not insured by the state must cover the cost of treatment personally, except for urgent and emergency health care which is always covered by the state.

Compulsory social insurance scheme for cash sickness benefit is an earnings-related benefit that applies to all employees. Most categories of self-employed are covered by sickness insurance since January 1, 2017. Sickness benefit is granted based on the Law on Sickness and Maternity Social Insurance (2000).<sup>8</sup> The required contribution record to be eligible for this benefit is at least three months during the last year, or at least 6 months during the last two years. The benefit is paid starting from the third day of sickness (employer pay remuneration for the two first days) until the capacity to work has been restored, or the level of work incapacity has been defined. The benefit amount is calculated based on compensatory income (CI) with maximum and minimum thresholds. The monthly CI is an average wage, calculated based on the insured person's income earned in the three consecutive months preceding the incapacity. The sickness benefit is 80% of the CI, but must not be lower than 25% of the insured income of the current year. It cannot exceed 5 times the State insured income for the current year.

All foreign residents are eligible to claim sickness benefits on the same terms as nationals. They are compulsory insured if employed or self-employed. There is no minimum period of residence in the country that non-EU citizens have to prove to become eligible for sickness benefits. Periods of contributions in different EU countries are aggregated, this aggregation rule also being stipulated in the bilateral agreements with Belarus and Ukraine. The payment continues if the beneficiary leaves the country, but still has an employment contract with a local employer.

### ***18.2.3 Pensions***

Lithuania's old-age public pension system consists of three components: Statutory pensions (hereafter named as Social insurance pensions or as the First pillar pension scheme), Social pensions, and State pensions. Their modes of financing and relative importance in the overall pension package vary greatly.

The social insurance pension scheme is the most important in terms of coverage and provision of income in old age and incapacity. The system is financed by employers, employees and contributions of the self-employed on PAYG basis. It is

<sup>8</sup>The Law on Sickness and Maternity Social Insurance of the Republic of Lithuania (2000). *Valstybės žinios*, 2000-12-29, Nr. 111-3574. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.116582?jfwid=6vyuslcgb>.

designed to replace part of the work income when an insured person retires (or becomes disabled or dies). The pension benefit consists of two components. The basic component is calculated based on the contributory period. The supplementary component is earnings-related. Working pensioners can combine social insurance pension with income from work without any deductions. In 2018, the retirement age was 63 years 8 months for men and 62 years 4 months for women. It is gradually prolonged to 65. The contribution period for a full pension is 30 years and is gradually prolonged to 35.

Work incapacity pensions are granted to individuals who have a minimal contribution record required for the entitlement. The requirements on the minimum and compulsory contribution periods for work incapacity pension are related to claimants' age.

State pensions are a public non-contributory scheme. They are granted mainly to two rather large population groups. The first group includes post-war anti-Soviet resistance fighters and people who have suffered from the former Soviet regime. The second group is military and police officers, judges, scientists, artists, and other smaller professional groups. As they are covered by the Social insurance pension scheme, State pensions provide supplementary income protection.

The social assistance pension is designed as a minimum income pension for those not protected by the social insurance pension scheme. Assistance pensions are paid to the elderly or disabled persons who did not acquire social insurance rights due to insufficient contribution record. Most recipients of this pension are disabled people from childhood.

There is no minimum period of residence in Lithuania after which non-EU citizens become eligible to claim a public contributory pension. On the other hand, non-resident Lithuanians are also entitled to claim a public contributory pension from Lithuania. However, a major challenge is the aggregation of contribution periods for migrant employees. For Lithuanian citizens, the contribution periods in other EU countries are aggregated to determine the entitlement to a contributory pension in Lithuania (based on Regulation No 883). Each country finances a share of the total pension according to the length of service in that country. Also, national citizens who decide to permanently move abroad can export their pensions from Lithuania. In that case, periods completed in other countries are aggregated to determine their entitlement to a contributory pension. However, the pension amount is limited. The period of employment during the Soviet regime (up to 1990) is not taken into account when calculating pension benefit.

Non-EU citizens who receive a contributory pension from Lithuania are allowed to export this pension when deciding to permanently move abroad, but only if they move to a country with which Lithuania has a bilateral agreement covering pensions. Such agreements exist with six non-EU countries: Belarus, Ukraine, Moldova, Russia, the USA and Canada. All six countries are important for pension provision because of intensive migration flows due to historical reasons. The first four countries belong to the post-Soviet space, whereas North America is among the most popular destinations for Lithuanians apart from several EU countries. In case of Belarus, Ukraine, Moldova and Canada, the agreements foresee an aggregation of

contribution periods and financing shares of pension benefits by each country according to the contribution periods. Thus, provisions of bilateral agreements are similar to the EU regulations. The agreement with Russia covers pension payments in the pensioners' country of residence, taking into account contribution period in the other country. The agreement with USA covers only export of pensions.

The remaining non-contributory state and social pension schemes are not so important from the perspectives of migration. Eligibility conditions of the state pensions are related to specific occupational status (e.g. military or policy service) or historical events (e.g. victims of the anti-Soviet resistance). Social pensions are paid only for those, who don't receive any other pensions from Lithuania or abroad, and a permanent residence permit is required. This residence permit also requires a source of living, hence the social tourism of elderly is not possible.

#### ***18.2.4 Family Benefits***

The policies to provide income support for children and families include contributory and non-contributory benefits. Contributory benefits are much more important, i.e. public expenditures on contributory benefits are several times higher than expenditures on non-contributory family and children benefits.

Contributory benefits mainly protect the income of families during the first 2 years after childbirth and include maternity leave benefits, paternity leave benefit, and childcare leave benefit. All three benefits are paid if applicants have sickness and maternity social insurance record for at least 12 months over the last 24 months. Resident citizens, EU nationals and non-EU citizens, as well as Lithuanians residing in other EU countries who are employed and have contributed for 12 months of insurance for this risk are eligible to claim contributory benefits. There are no specific requirements regarding prior residence in Lithuania, or regarding the country of birth or residence of the applicant's child. Periods of contributions are aggregated for people who migrate in the EU. Bilateral agreements with Belarus and Ukraine also cover aggregation of contributory periods and the benefit is paid by the country where individuals are insured when submitting the claim.

Maternity leave benefit is a cash benefit paid to a pregnant woman for the number of working days in the applicable period. The maternity benefit is equal to 100% of recipient's average monthly reimbursable income (AMRI) with a minimum amount specified. Paternity leave benefit can be claimed by fathers for the first month of childcare. The amount is 100% of the recipient's AMRI with a minimum amount specified.

Childcare leave benefit is a monthly payment aiming to support early childcare at home. It may be paid for 1 or 2 years by decision of beneficiaries. Mothers (fathers) can choose to take the benefit only during the first year (compensation rate is 100% of the beneficiary's reimbursed remuneration), or during the 2 years' period (compensation rate is 70% during the first year and 40% during the second year). It is allowed to work and receive full amount of the benefit during the second year.

Because of the high rates of contributory benefits, families eligible for maternity or paternity benefits are well protected against poverty (Lazutka et al. 2013).

Non-contributory benefits for children include the birth grant, the child benefit, the benefit to a conscript's child, the guardianship benefit, the housing grant (settlement) and the pregnancy grant.<sup>9</sup> The most important of them is the universal child benefit introduced since January 2018. Every child from birth to 18 years of age (or 21 for those who continue studying) receives a monthly benefit of €50. Non-contributory child benefits are paid to EU citizens working in Lithuania and non-EU citizens having permanent permission to reside in the country. EU nationals who are not employed in Lithuania have to declare residency and live in Lithuania for at least 3 months. Non-EU citizens with temporary residence permits are eligible for non-contributory family benefits if they worked for at least 6 months, or are unemployed, have permission to work and are registered at the Employment Service.

### **18.2.5 *Guaranteed Minimum Resources***

In Lithuania, the main element of the Minimum Income scheme is the Law on Cash Social Assistance for Low-Income Residents (2003),<sup>10</sup> which gives the legal basis for providing Social Assistance Benefits (SAB). Municipalities are responsible for SAB administration and provision. The SAB scheme is centralized in terms of eligibility criterion, conditionality rules and formula of the benefit amount. However, local authorities have the right to apply exemptions for eligibility criteria and conditionality rules in the provision of SAB.

The monthly benefit level is 100% of the difference between the State Supported Income (SSI) per person per month and an actual income of a single resident or the first family member, 80% for the second member and 70% for the third and later members. The Government sets the SSI as the basis for calculation of SAB level. It is set by a political decision and has no substantial basis. Since January 2018, SSI is equal to €122. A family (or a person) is entitled to SAB when the value of the assets does not exceed an established threshold. There is an income disregard to increase incentives to work. A share of work-related income from 15% to 35% can be disregarded depending on the number of children.

The benefit is awarded for 3 months and may be renewed if the circumstances have not changed. Claimants are required to provide themselves with all possible income that they can obtain. Family members (person) have to meet at least one of the following requirements related to employment status and ability to work:

<sup>9</sup>The Law on Benefits for Children of the Republic of Lithuania (1994). Nr. I-621. *Valstybės žinios*, 1994-11-18, Nr. 89–1706. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5981/JJrWzNnfOp>

<sup>10</sup>The Law on Cash Social Assistance for Low-Income Families (Single Persons) of the Republic of Lithuania (2003). *Valstybės žinios*, 2003-07-23, Nr. 73–3352. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.215633?jfwid=6vyuslc26>

- they are employed for at least 3 months;
- they are not employed because they are studying, are of retirement age; have disability of group I and II; are unemployed; are nursing a family member.

SAB recipients can be asked to take part in “socially useful activities” organised by municipalities and failing to do so may result in cancellation of the payment. Only resident nationals and EU citizens are eligible for social assistance. The period of prior residence is not an eligibility requirement, but the declared country of residence must be Lithuania. Those receiving the benefit can temporarily leave the country. However, there is a requirement to look for a job, to perform community work and to be ready for inspection of the living conditions. Non-EU citizens without long-term or permanent residence cannot claim this benefit. That is because there is a requirement to have a legitimate source of subsistence for residence permits or citizenship. Thus, claiming a minimum income benefit is exclusive in the process of seeking residence permits.

### 18.3 Conclusions

The Lithuanian social security model has mixed features of the Bismarckian and liberal models of welfare state. The main social risks are covered by means of social insurance. Social benefit levels are in general low as social protection financing as a share of the GDP is around two times lower compared to the EU average. Social security is administered mainly by the State Social Insurance Fund, the State Patients Fund, and municipal social assistance units. These institutions also provide services for migrants in the field of social protection. Migration process is handled by the Department of Migration.

Low levels of social provisions and earnings, as well as high levels of poverty and inequality are among the driving factors of intensive negative net migration from the country. In 27 years' time of regained independence, Lithuania lost around 25% of its population. Intensive emigration started following the restoration of independence in 1990, when families of Soviet army officers and administration left the country. Later, transition to market economy was marked by high unemployment, low labour income and social protection benefits, and uncertainty about the economic future. Many Lithuanians decided to emigrate for jobs to Western countries. Before joining the EU, emigration flows were largely undeclared and emigrants were not covered by the social security schemes in the host countries. They were not covered in Lithuania either, because of entitlement based mainly on the contributions into the national Social Insurance Fund.

Lithuania's EU accession in 2004 stimulated emigration, especially to the UK and Ireland. These countries did not apply a transitional period of 7 years to open their borders to workers from the new member states and decided to allow immigration immediately. The largest Lithuanian diaspora is in these countries. Brexit leaves social protection of this big community of Lithuanian emigrants uncertain.

For the date, Lithuanian emigrants and immigrants from the EU countries are protected as the country had fully harmonized its legislation on migration in line with the EU *acquis* and is following common rules on EU social security coordination.

Because of the prevailing contribution-based financing of social benefits, the right to social protection is generally linked to individuals' employment status and insurance record. Nationality and the length of residency are not among the factors that condition access to social protection of EU and non-EU foreigners in Lithuania. For EU-citizens, the periods of contributions in different EU countries are aggregated in order to be eligible to claim benefits. For third-country nationals, the aggregation of contribution periods, export benefits and some others specific issues depend on bilateral agreements. Lithuania has bilateral agreements with countries that historically have been in the same political and economic space, but outside of the EU, i.e. Belarus, Ukraine, Moldova, Russia (only on pensions); but also with countries in North America, e.g. traditional destination of emigration from Lithuania in the XX century.

Despite the high emigration rate during several decades, the migration pattern is starting to change. Decreasing unemployment, increasing wages and Brexit facilitate return migration of Lithuanians. Also, the number of foreign residents is increasing. Nearly a half of foreigners are Ukrainian citizens, a quarter are from Belarus. Lithuanian employers are increasingly willing to recruit cheaper labour from the neighbouring Slavic countries. Immigrant workers are covered by all social insurance schemes if they are employed legally and by categorical social protections schemes if they have permission to reside and to work in Lithuania. However, occasions of illegal immigration started to emerge in mass media (Mrazauskaitė 2017). This problem is also noticed by the State Labour Inspectorate.<sup>11</sup> Nevertheless, shortage of the labour force and increasing labour costs for business, rather than social protection issues, are on the agenda of public and political debates. The recent Strategy for the Demographic, Migration, and Integration Policy for 2018–2030 aims at encouraging return migration and attraction of foreign workers to satisfy demand for labour, while concern on stronger social protection for everybody – resident nationals and foreigners alike – and on the emerging problem of illegal immigration are not emphasized.

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<sup>11</sup> *Verslo žinios* (2017). *VDI įspėja: nelegalių darbuotojų iš užsienio daugės* [State Labour Inspectorate warns: the flow of illegal immigrants will increase]. 2017-12-28. <https://www.vz.lt/vadyba/personalo-valdymas/2017/12/28/vdi-ispeja-nelegaliu-darbuotoju-is-uzsienio-dauges#ixzz5jSS4UJFl>

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# Chapter 19

## Migrants' Access to Social Protection in Luxembourg



Nicole Kerschen

### 19.1 Overview of the Welfare System and Main Migration Features in Luxembourg

#### 19.1.1 Main Characteristics of the National Social Security System

Luxembourg established a Bismarckian social insurance scheme between 1901 and 1911, when it was in a *Customs Union* with Germany (Kerschen 2001; Scuto 2001). All blue-collar workers and white-collar workers, whose wages were under a certain limit, were compulsory insured against four social risks: sickness, industrial accidents, invalidity and old age. In the 1930s, social insurance was progressively extended to private sector employees. Wage supplements for children and an unemployment allowance for workers were also created. After World War II, *universalism*, the main principle of Beveridge's doctrine, was adopted. During the 1950s and 1960s, social insurance was extended to civil servants, self-employed workers and the agricultural sector. The social security system was still based on the male-breadwinner model: workers were granted social rights as insured persons, whereas family members were entitled to derived rights. All children raised in Luxembourg were entitled to family benefits.

In the 1970s, Luxembourg changed from an industrial economy to a more service oriented one, this also affecting the national welfare system. As a Bismarckian model, the funding of the social protection system was characterised by social contributions levied on wages and shared by employers and workers. Little by little, the

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State became the main contributor. From 2002 to 2016, the participation of the State in the incomings of the social protection system was about 50% and it fluctuated between 54% and 59% of the current public spending<sup>1</sup>. Despite this fundamental change, the practice of a professional activity in Luxembourg remained the basic criteria for registration as an insured person and an equivalent status was given to new categories of “workers”. Regarding social protection rights, the Welfare State was expanded in the 1980s and 1990s, when the Government created a guaranteed minimum income scheme (1986) and a long-term care insurance for the insured population from the cradle to the tomb (1998).

In 2008, the “*statut unique*” put an end to the traditional legal differences between blue-collar and white-collar workers. The four pension insurance funds and the five sickness insurance funds, based on socio-economic groups, merged into one pension insurance fund and one sickness fund. The current Luxembourg system is composed of the following institutions:

- the Common Centre for Social Security (*le Centre Commun de la Sécurité sociale* – CCSS<sup>2</sup>), which registers workers and their family members and collects the social contributions;
- the National Sickness Fund (*la Caisse Nationale de Santé* – CNS<sup>3</sup>), providing benefits in kind and in cash in case of sickness and maternity;
- the National Pension Fund (*la Caisse Nationale de Pension* – CNAP<sup>4</sup>), which pays invalidity and old age pensions;
- the Fund for the future of the children (*la Caisse pour l'avenir des enfants* – CAE<sup>5</sup>), which ensures the delivery of family benefits and compensation for parental leave;
- the Agency for the promotion of employment (*l'Agence pour la promotion de l'Emploi* – ADEM<sup>6</sup>), which provides benefits in cash and services to the jobseekers;
- the National Social Inclusion Office (*l'Office National d'Inclusion Sociale* – ONIS<sup>7</sup>), which replaced since January 2019 the National Solidarity Fund (*le Fonds National de Solidarité* – FNS), which pays a guaranteed minimum income (REVIS) as a social assistance benefit.

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<sup>1</sup> *Inspection générale de la sécurité sociale* (IGSS), *Rapport général sur la sécurité sociale au Grand-Duché de Luxembourg 2018*, Ministère de la Sécurité sociale, janvier 2019, p. 13. <https://igss.gouvernement.lu/fr/publications/rg/2018.html>. Accessed 29 May 2019.

<sup>2</sup> <http://www.ccss.lu/>. Accessed 29 May 2019.

<sup>3</sup> <http://cns.public.lu/fr.html>. Accessed 29 May 2019.

<sup>4</sup> <http://www.cnap.lu>. Accessed 29 May 2019.

<sup>5</sup> <http://cae.public.lu/fr.html>. Accessed 29 May 2019.

<sup>6</sup> <http://www.adem.public.lu/en.html>. Accessed 29 May 2019.

<sup>7</sup> <https://onis.gouvernement.lu/fr.html>. Accessed 29 May 2019.

### 19.1.2 Migration History and Key Policy Developments

In the nineteenth century, Luxembourg was an emigration country. Since 1842, Luxembourg was in the *Customs Union* with Germany and during that period, Luxembourg nationals emigrated mainly to France, the United States and South America. From 1891 onward, industrialization took place and main economic sectors channeled the request for foreign labor force. In the south of the country, mono-industry, iron and steel metallurgy, was grounded on foreign capital and labor force. In 1913, 60% of the staff was of foreign origins. World War I put an end to the *Customs Union* with Germany and to the attraction of foreign labor force. But this first period of immigration forged the Luxembourg political and legal approach of immigration. The Luxembourg citizenship was defined as *ius sanguinis* and, from 1878 onward, as *ius soli* for the children of foreign parents born in Luxembourg (Scuto 2010, 2013). On trade unions' initiative, a protectionist migration policy was put into place after World War I and until the 1970s economic crisis, national workers had a quasi-monopole on the labor market of the steel and metal industry in the south of the country, whereas foreign workers were considered as “*additional labor*”.

After World War II, Luxembourg signed bilateral agreements with Italy (1953), Portugal and Yugoslavia (1970), regulating employment and social security for workers from these countries. Family reunification was authorised only for Italian workers with a permanent contract and for Portuguese workers. A major change came with the establishment of the European Economic Community (EEC) in 1957. As a founding Member State, Luxembourg could no longer apply a protectionist migration policy to workers coming from an EU Member State, who were entitled to free movement and residence.

In the post-industrial period, Luxembourg became more and more an immigration country.<sup>8</sup> From 1981 to 2018, the resident population grew from 364,600 to 602,000 persons. In 1981, Luxembourg citizens represented 73% of the resident population, this share decreasing to 57% by 2011 and 52% by 2018. Yet, the naturalization rate in Luxembourg is below the EU28 average. 72.3% of new acquisitions of citizenship are granted to citizens of another EU Member State, with Portuguese citizens accounting for the largest share<sup>9</sup>. In fact, the large majority of foreigners residing in Luxembourg are EU nationals<sup>10</sup> (Table 19.1).

<sup>8</sup> Ministère des Affaires Etrangères et Européennes (2018). *Rapport d'activité*, Chapitre 8, 87–119. [https://maee.gouvernement.lu/content/dam/gouv\\_maee/minist%C3%A8re/rapports-annuels/Rapport-annuel-2018.pdf](https://maee.gouvernement.lu/content/dam/gouv_maee/minist%C3%A8re/rapports-annuels/Rapport-annuel-2018.pdf). Accessed 9 May 2019.

<sup>9</sup> EUROSTAT. Acquisition of citizenship statistics. [https://ec.europa.eu/eurostat/statistics-explained/index.php/Acquisition\\_of\\_citizenship\\_statistics#EU-28\\_Member\\_States\\_granted\\_citizenship\\_to\\_825.C2.A0400\\_persons\\_in\\_2017](https://ec.europa.eu/eurostat/statistics-explained/index.php/Acquisition_of_citizenship_statistics#EU-28_Member_States_granted_citizenship_to_825.C2.A0400_persons_in_2017). Accessed 29 May 2019. STATEC (2019). Naturalisations de la nationalité luxembourgeoise selon la nationalité d'origine 2010–2018. [https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12910&IF\\_Language=fra&MainTheme=2&FldrName=2&RFPPath=100](https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12910&IF_Language=fra&MainTheme=2&FldrName=2&RFPPath=100). Accessed 29 May 2019.

<sup>10</sup> STATEC (2019). 93% de la population luxembourgeoise sont des ressortissants de l'UE-28. Regards N°07, 05/2019. <https://statistiques.public.lu/catalogue-publications/regards/2019/PDF-07-2019.pdf>. Accessed 29 May 2019.

**Table 19.1** Population residing in Luxembourg (1981–2018)

	1981	1991	2001	2011	2018
<b>Population</b>	364,600	384,400	439,500	512,400	602,000
<b>Luxemburgish Citizens</b>	268,800	271,400	277,200	291,900	313,800
<b>Foreigners</b>	95,800	113,000	162,300	220,500	288,200
<i>From</i>					
<i>Portugal</i>	29,300	39,100	58,700	82,400	96,500
<i>France</i>	11,900	13,000	20,000	31,500	45,800
<i>Italy</i>	22,300	19,500	19,000	18,100	22,000
<i>Belgium</i>	7900	10,100	14,800	16,900	20,200
<i>Germany</i>	8900	8800	10,100	12,000	13,100
<i>UK</i>	2000	3200	4300	5500	5900
<i>Netherlands</i>	2900	3500	3700	3900	4300
<i>Other EU Member States</i>	10,600	6600	9200	21,500	36,500
<i>Third-country nationals</i>		9200	22,500	28,700	43,800

Source: STATEC, [https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12853&IF\\_Language=fra&MainTheme=2&FldrName=1](https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12853&IF_Language=fra&MainTheme=2&FldrName=1). Accessed 29 May 2019

The recent demographic changes are mainly due to economic reasons (Hartmann-Hirsch 2008). Since the 1980s, Luxembourg has had a continuous growth of GDP per capita (the highest in the EU), and of the *interior employment*. The concept of *interior employment* is used by STATEC to document Luxembourg's atypical labor market: it includes workers residing in Luxembourg and frontier workers residing in the neighboring countries, but excludes Luxembourg nationals residing in Luxembourg and working abroad, as well as employees working in Luxembourg for European and international institutions. During the past 20 years, *interior employment* grew by 93%, the number of workers with residence in Luxembourg by 53% and the number of frontier workers by 180% (Table 19.2).

## 19.2 Migration and Social Protection in Luxembourg

All persons engaged in a professional activity in Luxembourg, whatever their nationality or residence, are registered as insured persons by the Common Centre for Social Security. They are compulsory insured and in principle, all active persons have the same social rights. However, their situation might be different when it comes to accessing legal residence and employment. Three main groups can be identified in this regard:

- (a) Luxembourg citizens and their family members, whatever their nationality, have an unconditional right to reside and work in Luxembourg;

**Table 19.2** Interior employment by residence (labor contract only) (1998–2018)

	1998	2000	2005	2010	2015	2018
<b>Workers residing in Luxembourg</b>	<b>147,622</b>	<b>156,513</b>	<b>168,296</b>	<b>186,288</b>	<b>209,776</b>	<b>227,213</b>
	<b>68.70%</b>	<b>65.42%</b>	<b>59.43%</b>	<b>55.86%</b>	<b>55.76%</b>	<b>54.65%</b>
<i>Workers with Luxembourgish citizenship</i>	–	–	93,568	99,124	106,324	111,443
			33.0%	29.7%	28.2%	26.8%
<i>Workers from other EU Member States</i>	–	–	66,897	77,769	91,438	100,013
			23.7%	23.3%	24.3%	24%
<i>Non EU Workers</i>	–	–	7831	9395	12,014	15,757
			2.7%	2.8%	3.2%	3.8%
<b>Frontier workers</b>	<b>67,242</b>	<b>82,711</b>	<b>114,911</b>	<b>147,193</b>	<b>166,406</b>	<b>188,447</b>
	<b>31.30%</b>	<b>34.58%</b>	<b>40.57%</b>	<b>44.14%</b>	<b>44.24%</b>	<b>45.35%</b>
<b>Total</b>	<b>214,864</b>	<b>239,224</b>	<b>283,207</b>	<b>333,481</b>	<b>376,182</b>	<b>415,660</b>
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: STATEC, Interior Employment (data of the first trimester of each year)

[https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12916&IF\\_Language=fr&a>MainTheme=2&FldrName=3&RFPath=92](https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12916&IF_Language=fr&a>MainTheme=2&FldrName=3&RFPath=92). Accessed 29 May 2019.

- (b) EU citizens residing in Luxembourg for more than 3 months must prove either that they are workers or self-employed persons in Luxembourg [Article 6 (1) 1. of Law of 29 August 2008<sup>11</sup>] or that they have sufficient resources for themselves and their family members not to become a burden on Luxembourg's social assistance system and have comprehensive sickness insurance coverage in Luxembourg [Article 6 (1) 2.]. EU citizens can also reside abroad and work in Luxembourg, which is the case of thousands of frontier workers;
- (c) Non-EU citizens need a residence permit allowing them to work as employees. This permit is issued to foreigners who have the required professional qualifications and hold a labour contract for a post made available by ADEM, as long as the exercise of their activity does not undermine the priority in employment granted to Luxembourg and EU nationals and is of an economic interest for Luxembourg [Article 42 (1)].

Regarding social security, Luxembourg and EU nationals are covered by EC Regulation 883/2004 on the coordination of social security systems, whereas third-country nationals may be covered by bilateral/multilateral social security agreements.<sup>12</sup>

<sup>11</sup> Memorial A N°138 of 10 September 2008. <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2008-138-fr-pdf.pdf>. Accessed 29 May 2019.

<sup>12</sup> Luxembourg signed bilateral social security conventions, regulating especially old age pensions and access to healthcare, with the following countries: Albania, Argentina, Bosnia Herzegovina, Canada, Capo Verde, Chile, China, USA, India, Japan, Macedonia, Morocco, Moldova, Montenegro, Philippines, Quebec, Serbia, Tunisia, Turkey, Ex-Yugoslavia, Uruguay. <https://www.secu.lu/conv-internationales/conventions-bilaterales/>. Accessed 29 May 2019.

### 19.2.1 *Unemployment*

Articles L. 521-1 to L. 527-4 of the Labor Code, hereafter 'LC' (*Code du travail*<sup>13</sup>) regulate unemployment benefits provided by ADEM.<sup>14</sup> Luxembourg has never created an unemployment insurance scheme, for which employers and employees would have to pay social contributions. The costs of unemployment benefits are covered through the Employment Fund, which is financed by taxes. Moreover, Luxembourg has no unemployment assistance scheme, but those who drop out of the unemployment scheme, can claim the guaranteed minimum income (REVIS).

All legal residents who lose their job are entitled to unemployment benefits as long as they are involuntarily unemployed; available and fit for work; aged between 16 and 65; willing to accept suitable jobs or active employment measures and claim the benefit within 2 weeks. Eligible claimants must have worked for at least 26 weeks over the 12 months prior to the registration at ADEM. Benefits are earnings-related and represent 80% of the wages. The duration of payment depends on the duration of work during the previous 12 months, which means that a person who has worked during 8 months is entitled to the payment of unemployment benefits for 8 months.

In the case of EU nationals, Article 64 of EC Regulation 883/2004 allows them to export unemployment benefits after 4 weeks of unemployment registration and during 3 months. A U2 form must be provided to the jobseeker by ADEM and handed over to the employment service of the host country. The jobseeker must also register in the host country. If the jobseeker does not return to Luxembourg after 3 months, he/she will lose the right to unemployment benefits. Except for this disposal, it is not possible to export an unemployment benefit when a person moves from Luxembourg to another country.

Unemployment has some consequences on residence rights. An employed EU citizen is still considered as a worker *without time limit* when he/she loses his/her job, if the following conditions are fulfilled: he/she is involuntarily unemployed, has worked for more than 1 year in Luxembourg and is registered as a jobseeker at ADEM. However, EU citizens will be considered as workers *for only 6 months* if: (a) they are involuntarily unemployed and have registered as jobseekers at ADEM at the end of a fixed-term labour contract of less than 1 year and; (b) they are involuntarily unemployed during the first 12 months after hiring and have registered as jobseekers at ADEM. For the renewal of the residence permit, a non-EU foreigner must be employed under a labor contract or be self-employed. If he/she is unemployed, the renewal of the residence permit may be refused.

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<sup>13</sup><http://data.legilux.public.lu/file/eli-etat-leg-code-travail-20170703-fr-pdf>. Accessed 29 May 2019.

<sup>14</sup>Memorial A N°11 of 26 January 2012. <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2012-11-fr-pdf>. Accessed 29 May 2019.

### 19.2.2 Health Care

Book I of the Social Security Code, hereafter 'SSC' (*Code de la sécurité sociale*) regulates healthcare benefits in kind and in cash and the maternity benefit. Articles 1–7 define the beneficiaries of the compulsory regime and the conditions for accessing the voluntary regime. Benefits in kind are established under Articles 17–24, benefits in cash under Articles 9–16 and the maternity benefit under Article 25.

All persons engaged in a professional activity in Luxembourg, employees and self-employed, whatever their nationality or residence, are covered by a compulsory healthcare and maternity insurance. Moreover, insured persons who are temporary posted abroad by their employer remain covered by the Luxembourg sickness and maternity insurance. Several groups of individuals are exempted from compulsory insurance: (a) those who perform their professional activity only occasionally and in a non-habitual way for a duration designed in advance, which should not exceed 3 months per calendar year and; (b) upon request, those performing a professional activity in Luxembourg for a period which does not exceed 1 year and who remain affiliated in a sickness and maternity regime abroad. Healthcare insurance is extended to the family members of the insured person, to whom they are co-insured on the basis of derived rights.

National citizens, EU foreigners and non-EU foreigners, who reside legally in Luxembourg, who have been compulsory insured and who lose their rights, have the possibility to subscribe to a voluntary insurance, if they were active in Luxembourg for at least 6 months and they applied within the 3 months following the loss of their rights (case 1). Likewise, national citizens, EU foreigners and non-EU foreigners legally residing in Luxembourg who are not covered by the compulsory regime, have the possibility to subscribe a voluntary insurance (case 2). Compulsory insured persons and voluntary insured persons are obliged to pay contributions.

Regarding benefits in kind, patients have free choice of the healthcare providers, who are covered by a collective agreement signed between the CNS and the representatives of the providers. They are entitled to all healthcare provisions foreseen in the Social Security Code. For some special provisions, prior authorisation from CNS is needed. Terms, modalities and rates are inscribed in the CNS' Statutes. Insured persons become eligible to claim benefits in kind from the first day of affiliation if they are compulsory insured or if they subscribed to a voluntary insurance, because they lost their rights for compulsory insurance (case 1). If they subscribed to a voluntary insurance without prior affiliation (case 2), they will become eligible to claim benefits in kind only after 3 months. There are two types of coverage: reimbursement system and benefits-in-kind system. When patients see a physician, they pay the costs of medical treatment and later get reimbursed by the CNS. When they buy drugs or are hospitalised, the costs are directly paid to the healthcare provider by the CNS. In both cases, patients have to pay the costs that remain at their own expense.

Regarding cash benefits, since 2008, employers have to compensate the first 13 weeks of temporary incapacity to work due to sickness (Article L. 121–6 LC).

Employees are entitled to retain their full wage. Employers are members of a Mutual Insurance Company, which grants them reinsurance. Wages are reimbursed to the employers by the CCSS on behalf of the Mutual Insurance Company. Healthcare insurance pays a sickness allowance to self-employed people up to 52 weeks, provided they have worked for at least 104 weeks before they got sick. The same rules apply to employees, who remain incapable to work after the period of 13 weeks. The amount of compensation is equal to at least the guaranteed minimum wage and to a maximum of five times this guarantee. The payment of the sickness benefit in cash is suspended when the insured person stays abroad without prior authorisation by the CNS.

As for the maternity benefit, this is granted to women who have worked in Luxembourg for at least 6 months during the 12 months prior to the maternity leave. There is no condition regarding the country of birth or residence of the child. Maternity leave is compulsory and includes a prenatal leave, which starts 8 weeks prior to the anticipated date of birth, and a postnatal leave of 8 weeks after the delivery. Postnatal leave may be extended to 12 weeks under special conditions. The maternity benefit depends on previous earnings and is the same than the sickness benefit.

### ***19.2.3 Pensions***

Book III of the SSC regulates old age and invalidity pensions (Art. 170 to 268). All persons engaged in a professional activity in Luxembourg, employees and self-employed, whatever their nationality or residence, are covered by the compulsory pension insurance (Article 170 SSC),

It is possible for national citizens, EU foreigners and non-EU foreigners to join the pension scheme on a voluntary basis in two cases. Those who were compulsory insured in Luxembourg and lost their rights can subscribe to a voluntary insurance if they were active in Luxembourg for at least 12 months during the last 3 years before they lost their rights and if they applied within the 6 months following the loss of their rights (Art. 173 SSC). It is also possible for persons who are not engaged in a professional activity in Luxembourg due to family responsibilities to subscribe a voluntary insurance if they have their legal residence in Luxembourg, were compulsorily insured for at least 12 months, are under the age of 65 and are not entitled to a personal pension (Art. 173bis SSC).

Luxembourg has two different old age pension schemes, one applicable in the public sector and one applicable in the private sector. Since 1998, convergence between both schemes was promoted. In order to bring the national legislation in line with the European directives and ECJ case law, Luxembourg established the so-called ‘second pillar’ of company pensions. It added also the ‘third pillar’ of personal pensions thanks to tax-free allowances for pension contributions.

The pension scheme in the private sector is a pay-as-you-go system. It is funded by a global contribution rate at 24% shared by the workers (8%), the employers

(8%) and the State budget (8%). It guarantees a minimum pension of 90% of the social minimum wage for all insured persons who can prove a professional career of at least 40 years. The standard retirement age is 65 years, which means that workers who contributed for at least 10 years (including contributions on a voluntary basis) are entitled to a pension. Early retirement is possible under specific conditions. In 2012, the general scheme of pensions in the private sector underwent a policy shift. The main change concerned a progressive reduction, spread over 40 years, of the gross pension replacement rate linked to the average revenue of the professional career, which will force workers to postpone retirement and to stay longer in employment, if they want to receive the same level of pensions than in the past.

For national citizens and EU foreigners, the periods that they completed in another EU Member State will be aggregated according to EU Regulation 883/2004 to determine their entitlement regarding pension rights. This regulation does not apply to non-EU foreigners whose rights depend on bilateral conventions. The following credited periods are taken into account for the entitlement to pensions of national citizens, EU foreigners and non-EU foreigners: periods during which persons benefit from allowances replacing wages, provided that contributions for the pension insurance have been paid; 24 months for parents who care for the education of their children in Luxembourg; periods during which an informal carer takes care of a person in need for long term care at home; periods covered by parental leave; periods during which persons are entitled to REVIS; military service periods.

Those who are not engaged in a professional activity in Luxembourg due to family responsibilities, those who left a foreign pension regime not covered by a bilateral/multilateral convention or those who left the pension regime of an international organization providing for a flat-rate redemption value of pension rights, can back-purchase the corresponding periods provided they are legally residing in Luxembourg, they were compulsory insured for at least 12 months, they are younger than 65 and not entitled for personal pension rights. National citizens and EU foreigners can export the public contributory pension according to EU Regulation 883/2004, when they decide to permanently move abroad. Non-EU foreigners are not allowed to export their pension, except if a social security convention, which applies to them, provides for it.

As for invalidity pensions, according to Art. 187 SSC, persons are considered as invalid if they, due to prolonged illness, infirmity or wear, lose their capacity of work and become unable to exercise their last professional activity or any other occupation in accordance with their forces and capacities. They are entitled to an invalidity pension before the age of 65 if they have completed a probationary period of 12 insurance months during the last 3 years prior to the date when invalidity was recognised or since the sickness benefit in cash expired. If invalidity is due to an accident or to a professional sickness, no probationary period applies. The beneficiary of an invalidity pension must give up, in Luxembourg and abroad, any professional activity, as a self-employed subject to compulsory insurance and as an employee other than an '*insignificant*' activity. Moreover, up to 50 years, beneficiaries must comply with rehabilitation or retraining measures prescribed by the pension fund. Otherwise, the invalidity pension might be suspended. There are also

provisions for preferential employment for handicapped people. According to the size of a company, a specific number of posts are reserved for people with disabilities. Invalidity pension is automatically converted into an old age pension when the beneficiary reaches the age of 65.

#### **19.2.4 Family Benefits**

Since 2016, a universal benefit ('*benefit for the future of the children*') replaced the traditional family benefit. Each child is entitled to a flat-rate benefit of 265 EU per month (Law of 23 July 2016<sup>15</sup>). This new rule applies to children born since 1st of August 2016, to the children of a person who starts working in Luxembourg since that date and to persons with children who settle down in Luxembourg after 1st of August 2016. For all other children, the former regulation remains applicable, meaning they are entitled to traditional family benefits dependent on the composition of the family group. According to Art. 269 SSC, each child who resides effectively and on an ongoing basis in Luxembourg and has his/her legal domicile there, is entitled to the child benefit. Under this Article, '*legal domicile*' means that the person has an authorization to reside in Luxembourg, is legally registered in a municipality and has established the main residence in Luxembourg. Furthermore, family members, which means children born in wedlock, children born out of wedlock and adopted children of a person, who is subject to Luxembourg legislation according to EU regulation or to a bilateral social security agreement providing for family benefits in the country of employment, are entitled to the child benefit. Moreover, children as family members must reside in a country covered by the EU regulation or by a bilateral agreement. This condition applies to national citizens, EU foreigners and non-EU foreigners, when the father and/or mother is employed in Luxembourg and children reside abroad.

The law provides for exceptions. The condition of the '*effective and ongoing*' residence on the part of the child is presumed satisfied when the child resides temporarily abroad with a parent who is studying in an University abroad, who has been posted abroad by the employer but remains covered by the Luxembourg social security scheme, whom is granted the status of a diplomatic mission, etc. When a parent works and resides in Luxembourg and children reside in another EU country with the other parent who does not work, they are entitled to receive the Luxemburgish child benefit in the country of their residence. When the parent is an EU national cross border worker and the second parent is employed in the other EU country where both reside together with their children, two legislations are applicable at the same time and for the same family benefit. EU regulation provides for a priority rule. The State of the residence of the children will pay the family benefit.

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<sup>15</sup> Memorial A N°38 of 28 July 2016. <http://legilux.public.lu/eli/etat/leg/loi/2016/07/23/n2/jo>. Accessed 29 May 2019.

Luxembourg's benefit will be suspended up to the amount of the benefit in the residence country of the children. If the amount of Luxembourg's benefit is higher than the amount of the benefit in the other country, Luxembourg must pay the supplement corresponding to the difference between both benefits.

Paternity leave is guaranteed by Art. L. 233-16. 2 LC to all employees, regardless of their nationality or residence, who work under a labour contract in the private sector. It has been increased from 2 to 10 days since January 2018.<sup>16</sup> Paternity leave is granted for all children who are born in wedlock or out of wedlock or who have been adopted, even if they reside abroad. Two months before childbirth, the father must inform the employer that he wants to benefit from paternity leave. Therefore, he must produce a medical certificate. Paternity leave must be taken during the 2 months following childbirth and it can be split. Wages during the paternity leave are paid by the employer, who is entitled for reimbursement from the State for the days which exceed the first 2 days. Reimbursement is limited to 5 x the Social Minimum Wage.

The scheme of parental leave recently refocused for both parents (Law of 3 November 2016<sup>17</sup>). Each parent can benefit from a full-time leave of 4–6 months or from a part-time leave under special conditions, as long as the child is under the age of 6. During parental leave, an income related benefit is granted to the beneficiary. It is calculated on the average of the professional income from the 12 months preceding the beginning of parental leave. Its lower limit is equal to the social minimum wage for non-qualified workers and its upper limit is equal to the social minimum wage increased by two third. Both parents are entitled to parental leave provided they comply with the general conditions to access parental leave. Each parent must have been affiliated to the Luxembourg social security at the date when the child was born and, without interruption, during the 12 months preceding the beginning of the parental leave, either under one or more labour contracts totalling at least 10 working hours per week or as an apprentice or as a beneficiary of an allowance replacing wages for which contributions for sickness and maternity insurance have been paid. Children must be raised in the household and parents must devote themselves principally to the raising of their children. One parent must take the parental leave directly after the maternity leave, whereas the other parent is free to take it later. There are no conditions regarding nationality or residence of the parents and the child.

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<sup>16</sup> Law of 15 December 2017, Memorial A N°1082 of 18 December 2017. <http://data.legilux.public.lu/file/eli-etat-leg-loi-2017-12-15-a1082-jo-fr-pdf.pdf>. Accessed 29 May 2019.

<sup>17</sup> Memorial A N°224 of 10 November 2016. <http://legilux.public.lu/eli/etat/leg/loi/2016/11/03/n1/jo>. Accessed 29 May 2019.

### 19.2.5 *Guaranteed Minimum Resources*

Luxembourg established recently a new ‘*income for social inclusion*’ (REVIS). Law of 28 July 2018<sup>18</sup> amended Law of 29 April 1999 and replaced the previous ‘*guaranteed minimum income*’. The scheme is organized centrally under the supervision of the Ministry for Family Affairs, Integration and the Greater Region. REVIS includes two different types of allowances: a) an *inclusion allowance*, which represents the difference between the guaranteed minimum resources calculated according to the composition of the household and the household’s effective resources; and b) an *activation allowance*, aiming to support persons who participate in professional or social activation measures established in an action plan between ONIS and the beneficiaries. If the household has two adults, both of them are, in principle, entitled to activation measures.

EU and non-EU foreigners who apply for REVIS must have residence rights in Luxembourg, which means that they must be registered in the National Register for Natural Persons and reside actually where they established their usual residence. Non-EU foreigners must reside in Luxembourg for at least 5 years during the last 20 years or have long-term resident status. This condition does not apply to family members of national citizens or EU foreigners. EU nationals and family members, whatever their nationality, are not entitled to the REVIS during the first 3 months of their residence in Luxembourg or during the period they are looking for a job in Luxembourg, if they came to Luxembourg as jobseekers. This disposal does not apply to employees and self-employed, to persons who retain their status and to their family members, whatever their nationality.

REVIS is a means-tested benefit. Income and/or properties that individuals possess in Luxembourg and/or abroad are taken into account in order to determine the eligibility for the minimum income benefit. Likewise, applicants must have exhausted other social benefits or civic responsibilities of maintenance by family members to become eligible. If they are fit for the labour market, they must be registered at ADEM and search for a job.

## 19.3 Conclusions

Luxembourg’s population has changed under economic pressures. Today, half of the population are immigrants. Nationals from other EU Member States form the vast majority of the foreign population. They are covered by EC Regulation 883/2004 on the coordination of social security systems and entitled to the same social rights than Luxembourg nationals. Non-EU foreigners are covered by bilateral social security agreements that Luxembourg has signed with more than 20 countries.

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<sup>18</sup> Memorial A N°630 of 30 July 2018. The new law entered into force on the 1st January 2019. <http://legilux.public.lu/eli/etat/leg/loi/2018/07/28/a630/jo>. Accessed 29 May 2019.

Overall, immigrants legally residing and working in Luxembourg do not have major problems to access the social security system. However, entitlement to the guaranteed minimum income is restricted to EU citizens, including Luxembourg nationals, and to third-country nationals, who comply with very strict length of residence requirements.

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# Chapter 20

## Migrants' Access to Social Protection in Malta



Sue Vella

### 20.1 Overview of the Welfare System and Main Migration Features in Malta

This chapter provides an analysis of social security benefits in Malta by paying particular attention to differences in the conditions of access to five types of benefits (unemployment, health care, family benefits, pensions and guaranteed minimum resources) by different groups. Generally speaking, Malta's welfare system has traditionally been very similar to the Southern European model, sharing many of its key characteristics such as: relatively low overall social expenditure where contributory benefits are considerably more generous than poverty relief; reliance on families as care providers, together with low female employment rates; well-protected employment coexisting however with an irregular and unprotected periphery; and a high involvement of the Catholic Church in the provision of welfare (Ferrera 1996). Similar to other Southern European states, Malta's welfare system has evolved to promote female employment, to enable the balance of work and care responsibilities, to strengthen work incentives and include those furthest from the labour market through a variety of training and support measures. These changes have mainly been driven by Malta's accession to the EU in 2004 and the policy convergence it has brought about. Accession has also meant the extension of the Social Security Act to EU nationals residing in Malta on the same terms as Maltese nationals. There have been numerous benefit changes in recent decades, driven by principles of non-discrimination, adequacy, sustainability and activation.

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## 20.1.1 Main Characteristics of the National Social Security System

The introduction of the first statutory social security benefit in Malta dates back to the late nineteenth century. Other benefits were introduced in the early twentieth century, most notably through the Old Age Pensions Regulations<sup>1</sup> of 1948. However, it was not until 1956 that the structure of the current social security system was established. In 1956, the National Insurance Act and the National Assistance Act were passed, and the Department of Social Security<sup>2</sup> was set up. In 1987, comprehensive amendments were made that brought together the Old Age Pensions Regulations, the National Insurance Act and the National Assistance Act into one legislation – the Social Security Act.<sup>3</sup> The Social Security Act provides for a contributory scheme and a non-contributory one. Regarding the contributory scheme, all persons who are between 16 years and pensionable age must pay a weekly contribution to this scheme, though a number of groups are exempted.<sup>4</sup> The contributory scheme includes benefits such as sickness, healthcare, unemployment, injury, invalidity, retirement, maternity and widowhood. To be eligible to the non-contributory scheme, applicants must meet the conditions of a means-test. Benefits under this scheme include social assistance and children's allowances among others.

Social security in Malta is financed through taxation and national insurance contributions by employers, employees, and self-employed/self-occupied<sup>5</sup> persons. Employers and employees both pay Class One contributions that represent 10% of the employee's basic weekly wage subject to a maximum of €45.58 in 2018, payable by both parties. Self-employed/self-occupied persons who earn more than €910 per annum pay Class Two contributions based on their annual net profit or income in the preceding year. Class two contributions represent 15% of net income, subject to a maximum of €68.37 per week, in 2018.<sup>6</sup> The State contributes 50% of the combined contributions of employers and employees, and of self-employed/

<sup>1</sup> Old Age Pensions Regulations (1948)/*Regolamenti dwar il-pensjonijet għax-xjuħ* (1948). <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9762&l=1>. Accessed 30 March 2019.

<sup>2</sup> Department of Social Security. *History of Social Security in Malta*. <https://socialsecurity.gov.mt/en/about-us/Pages/The-History-of-Social-Security-in-Malta.aspx>. Accessed 24 June 2018.

<sup>3</sup> Social Security Act (1987)/*Att dwar is-Sigurtà Soċjali* (1987). <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8794>. Accessed 30 March 2019.

<sup>4</sup> Including individuals who are in full-time education or training; persons not in gainful employment, or those whose annual income falls below a floor established by the Inland Revenue Department; persons in receipt of parents', survivors', invalidity or retirement pensions; or those in receipt of non-contributory social assistance or pensions.

<sup>5</sup> Self-occupied persons are those who earn income from trade, business, profession, vocation or any other economic activity that exceeds €910 per annum. Self-employed are those who receive income from rents, investments, capital gains or any other income (Commissioner for Revenue n.d.)

<sup>6</sup> Commissioner for Revenue. <https://cfr.gov.mt/en/inlandrevenue/personaltax/Pages/SSC2-2018.aspx>. Accessed 30 March 2019.

self-occupied persons. Long-term benefits (injury, invalidity, retirement and survivors) are financed on a 'pay as you go' basis. Non-contributory social assistance is funded through taxation and general revenue.

### **20.1.2 Migration History and Key Policy Developments**

Malta has, like many other countries in Southern Europe, traditionally seen higher levels of emigration than immigration. It was not until the early years of the new millennium that levels of immigration started to rise. Malta went from being a very homogenous society to one where the free movement of EU nationals in Malta from 2004 broadly coincided with a steady inflow of asylum seekers. The main reasons for immigration to Malta are predominantly labour migration (especially among EU nationals following accession) and asylum seeking; the latter started to rise in 2003, peaking in 2008 and rising again in 2013 before dropping markedly after 2014.<sup>7</sup>

Figure 20.1 illustrates immigration by broad citizenship groups. A steady rise may be noted over the past decade, both in the number of persons immigrating to Malta as well as the equivalence of each annual inflow to the total population, rising from 1% in 2006 to 4.5% in 2017. Although in the first decade of the new millennium, third-country nationals (TCNs) outnumbered EU citizens, by 2015, the situation was reversed.

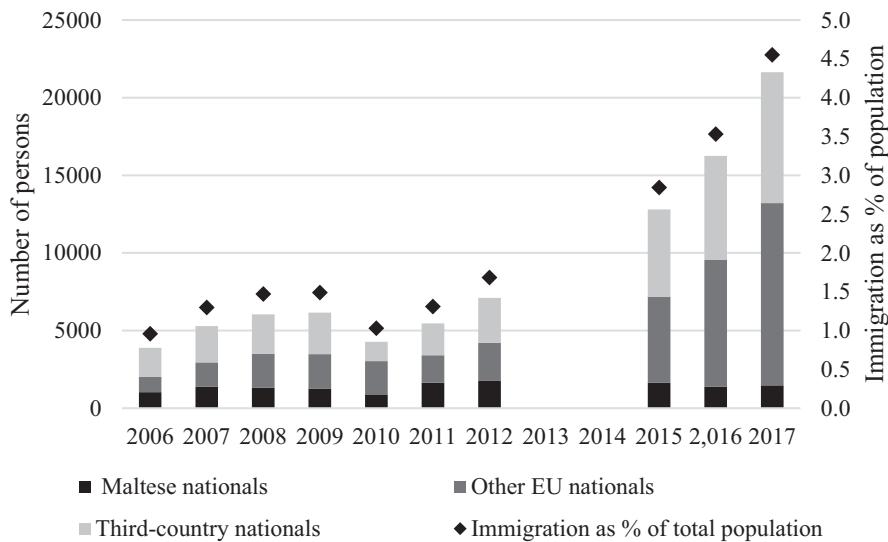
According to the Parliamentary Question Number 2527,<sup>8</sup> 27,228 non-EU foreigners resided in Malta in 2017, with the three largest groups originating from Libya (13% of TCNs), Serbia (10%) and the Philippines (9%). On the other hand, JobsPlus<sup>9</sup> data (based on compulsory employee registration) show that foreign workers in formal employment in Malta have risen from 3854 persons in 2002 to 44,565 persons in 2017 (equivalent to 20.2% of the employed population in Malta). Of these, 78% were EU nationals and 22% TCNs. Most non-EU foreign workers came from the Philippines and Serbia/Montenegro (both 30%), India (11%), Libya and the Russian Federation (5%), Turkey, China, Nigeria and Bosnia/Herzegovina (all 4%), and Eritrea (3%).

There is a discrepancy between the total number of third-country nationals residing in Malta according to PQ2527 (27,228 persons) and those in registered employment (9804 persons). If both sets of data are correct, it would seem that 17,424

<sup>7</sup>UNHCR (2019). *Figures at a glance*. <https://www.unhcr.org/mt/figures-at-a-glance>. Accessed 30 March 2019.

<sup>8</sup>House of Representatives (2017). *Foreign nationals living in Malta. Parliamentary Question 2527- Sitting 57 of 27.11.17*. Malta: Parliament. <http://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c12581e5005436dc!OpenDocument>. Accessed 4 March 2018.

<sup>9</sup>JobsPlus (2019). *Foreign nationals employment trends*. <https://jobsplus.gov.mt/resources/publication-statistics-mt-mt-en-gb/labour-market-information/foreigners-data#title1.2>. Accessed 30 March 2019. Jobsplus is Malta's public employment agency.



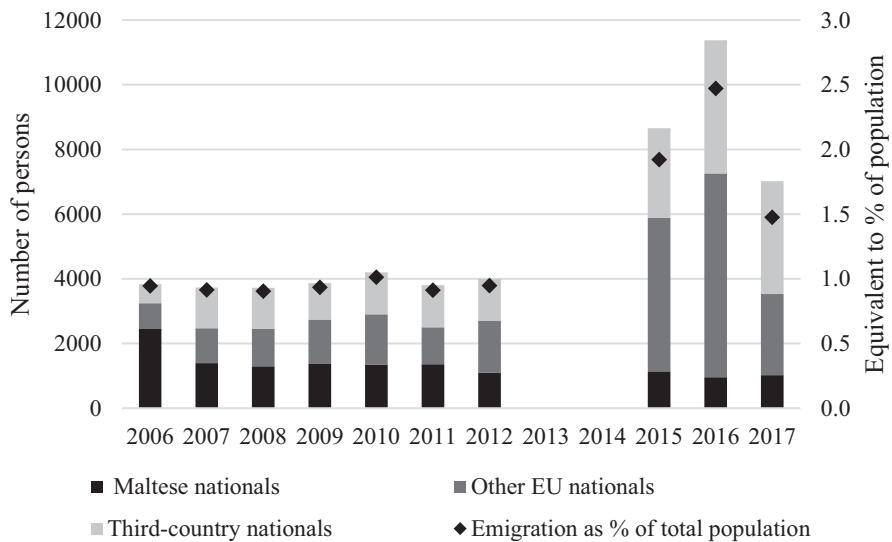
**Fig. 20.1** Immigration to Malta, 2006–2017. (Source: National Statistics Office (2015, 2016, 2017, 2018a, b). NB: Comparable data for 2013 and 2014 not available at time of writing)

third-country nationals residing in Malta are not in employment (or in formal employment). A good number of these may be inactive family members or students. While a degree of irregular work is believed to occur among asylum seekers, there are no estimates in this regard.

Regarding EU nationals, according to JobsPlus<sup>10</sup> the top 10 countries of origin are Italy (28% of all EU citizens living in Malta), the UK (17%), Bulgaria (9%), Romania and Hungary (both 6%), Sweden and Germany (both 5%), Spain, Poland and France (all 4%). Immigration from these EU countries has increased steadily in recent years.

Turning to emigration, Fig. 20.2 illustrates emigration trends between 2006 and 2017. The number of Maltese nationals migrating abroad has remained quite constant in recent years. Emigration from Malta has however risen among EU nationals and third-country nationals. In 2017, total emigration was equivalent to around 2% of the total population. Data regarding the destination countries of emigrants were not available.

<sup>10</sup>JobsPlus (2019). *Foreign nationals employment trends*. <https://jobsplus.gov.mt/resources/publication-statistics-mt-mt-en-gb/labour-market-information/foreigners-data#title1.2>. Accessed 30 March 2019.



**Fig. 20.2** Emigration from Malta, 2006 to 2017. (Source: National Statistics Office (2015, 2016, 2017, 2018a, b). NB: Comparable data for 2013 and 2014 not available at time of writing)

## 20.2 Migration and Social Protection in Malta

All persons, irrespective of nationality, who reside and work in Malta are obliged to pay national insurance contributions under the Social Security Act, this making them eligible for contributory benefits. The exception to this is the unemployment benefit, to which third-country nationals who are not long-term residents are not entitled (given that this benefit is contingent upon registration for work with the public employment service and they are not entitled to do so). For non-contributory benefits, persons who are legally residing in Malta may be eligible to social assistance under the conditions stipulated in the Social Security Act.

### 20.2.1 Unemployment

Access to unemployment benefits in Malta is regulated by the Social Security Act and the Employment and Training Services Act. Benefits are administered by the Department of Social Security<sup>11</sup> while the public employment service Jobsplus<sup>12</sup> is responsible for activation measures and the registration of jobseekers. There are two types of unemployment benefits. Jobseekers formerly in employment who meet the

<sup>11</sup><https://socialsecurity.gov.mt/en/Pages/default.aspx>. Accessed 30 March 2019.

<sup>12</sup><https://jobsplus.gov.mt/>. Accessed 30 March 2019.

contributory and job search criteria benefit from the flat-rate unemployment benefit. In 2018, this benefit was €8.13 per day (single rate) or €12.44 per day (married rate).<sup>13</sup> Jobseekers who do not meet the contributory criteria can claim unemployment assistance (the maximum weekly rate for the head of household in 2018 was €104.38 plus €8.15 per dependent household member). The special unemployment benefit (a hybrid of the contributory benefit and social assistance) is paid to insured persons who qualify for unemployment benefit and who, being heads of household and also eligible for social assistance, are paid a higher rate.

Eligibility for unemployment benefit does not depend upon prior residence in Malta, but upon meeting contributory criteria. Unemployment benefits are granted to former employees who are involuntarily unemployed, fit and available for work, and registered for work under the Part 1 register held by Jobsplus (if a jobseeker does not register for work every week, the benefit is withheld). Claimants must have paid at least 50 weeks of Class 1 contributions, of which at least 20 should have been made in the two years preceding the application. A maximum of 156 days' benefit is paid, provided that the number of benefit days does not exceed the number of contributions previously paid.<sup>14</sup> As for unemployment assistance, this benefit is available for individuals who are heads of household, legally residing in Malta, and registered on Part 1 of the Unemployment Register. Applicants must satisfy the capital means test and their total income must not exceed the maximum unemployment assistance rate.<sup>15</sup>

Third-country nationals are not entitled to claim unemployment benefit. This is because they are unable to register for work at the public employment service which, in turn, is a requirement for receiving unemployment benefits (unless they are permanent residents and thus able to register for work at the public employment service). Regarding unemployment assistance, only legally resident persons are entitled to apply. Third-country nationals require an employment licence to work in Malta and therefore would not be eligible to unemployment assistance, unless they are long-term residents. As for EU nationals, because unemployment assistance is a form of social assistance, it falls outside the scope of Regulation 883/2004. EU nationals are thus not entitled to social assistance for their first three months in Malta or during the subsequent job search period. This is because under Legal Notice 191/2007, Union citizens seeking to reside in Malta are to prove that they have sufficient resources to avoid becoming a burden on the Maltese social assistance system. That said, following the Judgement Brey (C-140/12), Malta examines each case on its own merits, depending on the conditions which rendered the Union citizen in need of social assistance. Regarding exportability, unemployment assistance is tied to residence and it is therefore not exportable. However, Maltese

<sup>13</sup>This and all subsequent rates were derived from Department of Social Security. *Benefit rates*. <https://dsservices.gov.mt/BenefitPaymentRates.aspx>. Accessed 21 June 2018.

<sup>14</sup><https://socialsecurity.gov.mt/en/Documents/Benefits-and-Assistance/UnemploymentBenefitEN.pdf>. Accessed 30 March 2019.

<sup>15</sup><https://socialsecurity.gov.mt/en/Documents/Benefits-and-Assistance/Unemployment%20Assistance.pdf>. Accessed 30 March 2019.

citizens residing in other EU countries can receive unemployment benefits from Malta if they have been registered before leaving with Jobsplus for at least four weeks and if they register with the public employment service of the host country (in line with Regulation 883 of 2004).

The three largest groups of non-EU nationals in Malta come from Libya, Serbia and the Philippines.<sup>16</sup> No bilateral agreements that deal with unemployment currently exist with these countries. The three largest groups of Maltese citizens abroad reside in Australia, Canada and the United States. Although bilateral agreements do exist with Australia and Canada, these do not cover unemployment benefits.

## 20.2.2 *Health Care*

In case of sickness, access to benefits in kind and cash is regulated via different pieces of legislation including the Social Security Act, the Medical and Kindred Professions Ordinance, Hospital Fees Regulations and Health Care Fees Regulations. Malta has a universal health care system and the fourth lowest rate of unmet health need in the EU (Azzopardi Muscat et al. 2017). The healthcare expenditure in Malta exceeds the EU average, being financed through taxation and general revenue and administered by the Ministry for Health (Azzopardi Muscat et al. 2017). Services are free at the point of use for those entitled to such services. Pharmaceutical products that are needed following discharge from hospital are purchased by the patient except for those eligible to sickness assistance or free medical aid.

Eligibility to free medical aid depends upon a means-test and medical certification; all persons entitled to social assistance are also entitled to free medical aid. Emergency public healthcare is free of charge for Maltese citizens and their dependent children; EU nationals ordinarily resident in Malta; third-country nationals with an employment licence and paying social security contributions; citizens with freedom of movement in Malta or those from a country with a reciprocal health agreement; advisors and consultants to government; and students at the main post-secondary educational institutions. Other groups outside this list have to pay fees as set out in the Healthcare (Fees) Regulations. Regarding planned healthcare services, these are free of charge for Maltese and EU nationals having a certificate of entitlement under EU Regulations 883/2004 and 987/2009. Similarly, third-country nationals paying national insurance in Malta are entitled to treatment along the same lines as Maltese and EU nationals and do not have to contribute towards the cost of their treatment.

The sickness benefit is a contributory cash benefit payable to employees and self-occupied persons from the fourth day of illness, as the employer is obliged to pay

<sup>16</sup> House of Representatives (2017). *Foreign nationals living in Malta. Parliamentary Question 2527- Sitting 57 of 27.11.17.* Malta: Parliament. <http://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c12581e5005436dc!OpenDocument>. Accessed 4 March 2018.

the first three days. The daily rates in 2018 are €13.28 (single) or €20.51 (married).<sup>17</sup> The benefit can last up to 156 days (or 468 days for serious illness or injury) but cannot exceed the total social security contributions paid by the employee prior to sickness. Sickness assistance is non-contributory and is payable when certain defined chronic medical conditions incur exceptional expenditures. The assistance is provided for as long as the chronic condition prevails and may be lifelong. Those with limited means are also entitled to free medical aid (colloquially known as the *Pink Form*), consisting of a limited number of medicines plus dental and ophthalmic services.

All employed and self-employed persons, irrespective of nationality or period of prior residence in Malta, are entitled to sickness benefits if they meet the contributory criteria. Eligible applicants must have paid at least 50 weekly contributions, out of which 20 for the last two consecutive complete contribution years before the beginning of the benefit year. Sickness assistance is means tested. The contributory sickness benefit may be exported within the EU, whereas the means-tested sickness assistance is tied to residence in Malta and cannot be exported.

Invalidity benefits are contributory benefits payable to persons who are certified incapable of suitable full-time or regular part-time employment due to serious disease or impairment. Claimants must be under retirement age; have been in continuous employment or Part 1 registration for at least 12 months preceding application; certified incapable of suitable employment by a medical panel; and have at least 250 paid weekly contributions with an average of at least 20 contributions per year since the age of 18. Accreditation for missing periods is possible in some cases, but unemployment periods for third-country nationals are not taken into consideration for accreditation purposes (unlike in the case of Maltese and EU nationals for which unemployment periods can be accredited for contributory record purposes). The invalidity benefit is exportable worldwide.

No bilateral agreements that deal with health-related benefits currently exist with the three largest countries of origin of TCNs residing in Malta (Libya, Serbia, and the Philippines). From the countries that represent the three most relevant destinations of Maltese citizens abroad, bilateral agreements exist with Australia and Canada, and both include invalidity pensions, which allow for a pro-rata invalidity pension from Malta according to the number of contributions paid in Malta out of their total working life in Malta and Australia/Canada. However, these agreements do not cover sickness benefits in kind or in cash.

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<sup>17</sup> Benefit rates from <https://dssservices.gov.mt/BenefitPaymentRates.aspx>. Accessed 30 March 2019.

### 20.2.3 *Pensions*

Pensions in Malta are regulated by the Social Security Act and the Pensions Ordinance. The main pension is the contributory retirement pension which has two forms: (a) the 'two-thirds pension' and (b) the flat-rate pension. The 'two-thirds pension' is a defined-benefit scheme with a minimum and maximum rate depending on the average of contributions paid and applicant's pensionable income.<sup>18</sup> The scheme is financed by contributions on a pay-as-you-go (PAYG) basis and covers employees and self-employed/self-occupied persons. The flat-rate pension is for persons who have low pensionable income or who also receive a service pension. There is also a means-tested non-contributory age pension.

Following the 2006 reforms, pensionable ages were increased, reaching 62 for those born between 1952 and 1955 and 65 for those born on or after 1962. Applicants must satisfy the contributions test: having paid (or been accredited) a yearly average of at least 50 contributions from 1956 or from age 19, and/or from age 18 if born after 1958 up to the last full year prior to retirement. Thus, a person retiring in 2018 would have had to pay 1820 weekly contributions. The minimum period of contribution required is 10 years for those born before 1962 (12 years if born thereafter); the period required for a maximum pension is now 40 years. Accreditation is possible for periods of sickness, widowhood, invalidity, unemployment, injury, child-raising, study, work in the Police or Armed Forces, Civil Protection, carers and voluntary workers. Single inactive nationals may join the contributory pension on a voluntary basis. Retrospective contributions are also possible for specific cases,<sup>19</sup> but they cannot be made for periods when applicants were not in Malta.

As noted, unemployed residents who are over 60 and do not qualify for a contributory retirement pension may be entitled to a non-contributory pension if they satisfy the means test. Capital resources must not exceed €23,300 for a married couple or €14,000<sup>20</sup> in other cases. Applicants' weekly means must not exceed the highest rate of age pension. The contributory pension does not differentiate on the

<sup>18</sup> The formula for pensionable income differs per retirement cohort following the 2006 reform. It is currently calculated as follows: for employed persons born between 1952 and 1955, the pensionable income is based upon the yearly average salary of the best full 3 consecutive years in the last 11 years prior to retirement; for self-employed/self-occupied born in these years, it is based upon the yearly average net income of the best 10 consecutive years in the last 11 years prior to retirement. The formula changes with subsequent cohorts; for the 'youngest' cohort (born after 1961), the pensionable income is based upon the yearly average salary (employed) or net income (self-employed/self-occupied) of the best 10 years in the last 40 years. See: Department of Social Security. *Contributory Retirement Pension*. <https://socialsecurity.gov.mt/en/Pensions/Pages/Contributory-Retirement-Pension-FAQ.aspx>. Accessed 20 June 2018.

<sup>19</sup> Unmarried persons who were in gainful employment but who did not effect insurance payments pertaining to the five years before making the request for a pension; and persons aged between 59 and 64 in gainful employment who wish to make retrospective payments for missing contributions that do not exceed five years

<sup>20</sup> <https://socialsecurity.gov.mt/en/Documents/Benefits-and-Assistance/AgePensionEN.pdf>. Accessed 30 March 2019.

basis of nationality. Regulation 1408/71 means that pension contributions paid in any EU country are taken into consideration when calculating the contributory pension in Malta.

Contributory pensions may be exported worldwide. As for non-contributory pensions, EU citizens normally residing in Malta are entitled to apply. Third-country nationals are not, unless they are long-term residents. Moreover, non-contributory pensions are not exportable. As for the coverage of old-age pensions in bilateral agreements, according to the agreement with Australia, any residence in Australia is deemed to be a period of contribution in Malta and vice-versa. Similar provisions apply to Maltese living in Canada and New Zealand, and vice-versa.

## 20.2.4 Family Benefits

Family benefits are regulated by the Social Security Act and the Employment and Industrial Relations Act. They are financed through taxation and general revenue. While families are supported in various other ways (for instance, through the tax mechanism and through free or subsidised childcare), this section focuses on the maternity benefit, the maternity leave benefit, and children's allowances (there are no specific schemes for paternity or parental benefits in Malta).

Maternity benefit is payable to any pregnant woman ordinarily resident in Malta who is not in employment or is self-occupied. This benefit is of a maximum of 14 weeks, out of which 8 weeks before birth. The weekly rates in 2018 were of €172.51 for a self-occupied woman, and €92.02 for a woman not in employment.<sup>21</sup> The maternity leave benefit is paid by the State for four weeks to women in employment, following the 14 weeks of paid maternity leave paid by the employer. The maternity benefit and the maternity leave benefit are non-contributory and are neither means-tested nor earnings-related. The children allowance is payable to parents who have the custody of dependent children up to the age of 16 (or 21 if in education or first-time jobseekers). Children's allowance is non-contributory, means-tested, and it depends on family income. In 2018, the allowance ranged between €8.66 and €22.23 per week.<sup>22</sup>

Eligibility to family benefits such as maternity benefits and children's allowance is based on ordinary residence in Malta, rather than nationality. Information on the website of the Department of Social Security ties eligibility to being either citizens of Malta or EU nationals; or married to/cohabiting with a citizen of Malta; or citizens of a country that is party to the European Social Charter; or have refugee status.<sup>23</sup> However, the Department has clarified that all eligible residents in Malta are

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<sup>21</sup> <https://dssservices.gov.mt/BenefitPaymentRates.aspx>. Accessed 30 March 2019.

<sup>22</sup> <https://dssservices.gov.mt/BenefitPaymentRates.aspx>. Accessed 30 March 2019.

<sup>23</sup> [https://servizz.gov.mt/en/Pages/Inclusion\\_-\\_Equality-and-Social-Welfare/Social-Solidarity/Benefits-and-Services/WEB648/default.aspx](https://servizz.gov.mt/en/Pages/Inclusion_-_Equality-and-Social-Welfare/Social-Solidarity/Benefits-and-Services/WEB648/default.aspx) and [https://servizz.gov.mt/en/Pages/Inclusion\\_-\\_Equality-and-Social-Welfare/Social-Solidarity/Benefits-and-Services/WEB648/default.aspx](https://servizz.gov.mt/en/Pages/Inclusion_-_Equality-and-Social-Welfare/Social-Solidarity/Benefits-and-Services/WEB648/default.aspx)

entitled to apply for these family benefits, this also being reflected in the EU's 2018 publication *Your Social Security Rights in Malta*. National citizens living abroad cannot claim these benefits from Malta. In the case of children's allowance, the child must be ordinarily resident in Malta, and the recipient must have the care and custody of the child. Current bilateral agreements do not cover family-related benefits.

### **20.2.5 Guaranteed Minimum Resources**

Malta does not have a general guaranteed minimum resources scheme. While it does have a social assistance scheme generally thought of as a 'safety-net', this is a categorical scheme based on double conditionality: (i) *ex ante*, applicants must be legally and ordinarily resident and belong to any of the following categories: being incapable of work due to medical reasons; or having the sole care and custody of children; or caring for a spouse who is critically ill; and (ii) an *ex post* work restriction (see Slack and Ulph 2017).

## **20.3 Conclusions**

Malta is currently enjoying strong economic growth with high employment and record low unemployment levels. Labour shortages currently attract more policy and public attention than does access to benefits. Although a small minority do, on occasion, publicly express concern over the effect of non-nationals on the welfare system, this has typically related to asylum seekers and not to EU nationals or third-country nationals who work and live in Malta on the basis of an employment licence.

As explained in this chapter, access to contributory benefits does not differentiate on grounds of nationality. If applicants meet contributory requirements, they are eligible to benefit under the respective schemes. Moreover, contributory benefits are exportable. An exception to this, however, relates to the access of third-country nationals who, having worked and paid social security contributions in Malta, are not entitled to unemployment benefits (unless they hold the status of long-term residents). This is because third-country nationals are only entitled to reside in Malta on the basis of an employment licence for a specific position (that cannot be filled by a Maltese or other EU national); once this employment ends, they are not entitled to seek other work in Malta. Thus, being unable to register for work at the public employment service (which is necessary for entitlement to unemployment benefit), third-country nationals cannot avail of this benefit.

Unlike contributory benefits, access to non-contributory benefits is not as universal. In the case of family-related benefits, both Maltese and EU nationals (if ordinarily resident in Malta) are entitled. There is less certainty, at least in official documentation, regarding third-country nationals. While the Departmental website states that only those third-country nationals who are married to/cohabit with a Maltese citizen, or who are long-term residents, or have refugee status or come from a country covered by the European Social Charter are eligible to maternity and child benefits, in practice, it appears that all ordinary residents in Malta are eligible if they meet the relevant criteria. This may prove somewhat misleading to potential non-EU applicants who do not feature in the 'eligibility' list.

Access to unemployment assistance is also limited. It is based on a test of need and tied to ordinary residence. By definition, those third-country nationals only entitled to reside in Malta on the basis of an employment licence (and who therefore have income from employment) are not entitled to unemployment assistance, although TCNs who hold a long-term residence permit do qualify. Neither are EU nationals entitled to apply for unemployment assistance in the first few months of their stay in Malta, as is the case in most EU member states wishing to discourage 'welfare tourism'. However, when EU nationals establish a link with Malta, and become ordinarily resident here, their application for unemployment assistance is considered on its own merits and with reference to the reason for such need.

Overall, the pace and extent of immigration has been unprecedented in recent Maltese history and occurred at a time of rapid social change and far more secular lifestyles. Some have expressed concern over the impact of rising immigration on the 'national identity' of an increasingly cosmopolitan Malta; there have also been a few who have made third-country nationals the target of their discontent. This however co-exists with the activities of a vigorous and unstinting group of NGOs who campaign for migrants' rights and support them on various fronts. The long-delayed introduction of an Integration Strategy, which was finally published in December 2017,<sup>24</sup> formalised the integration policy infrastructure in Malta and launched the integration process which includes two-stage training in Maltese, English and cultural orientation, casework and cultural mediation and awareness raising, among other initiatives.

To conclude, the overall picture regarding the link between migration and welfare in Malta is mixed. While EU migrants enjoy the same contributory entitlements as Maltese, entitlement to social assistance is less clear and levels are meagre especially in the light of sharply rising housing costs. However, this is also true for eligible Maltese nationals in a context, as explained earlier on, where effort is made to ensure that contributory benefits do not undermine the 'make-work-pay' principle (and therefore remain below a rather low minimum wage), and that non-contributory benefits remain lower than contributory ones – reflecting less perceived 'merit' but certainly not lesser need.

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<sup>24</sup> MEAE (2017). *Migrant Integration Strategy & Action Plan Vision 2020*. Ministry for European Affairs and Equality. <https://meae.gov.mt/en/Documents/migrant%20integration-EN.pdf>. Accessed 1 March 2019.

Perhaps the most apt characterisation of Malta's evolving approach to the social rights of third-country nationals can be found in the taxonomy outlined by Dean (2011). Malta seems to have moved, over the years, from Dean's *moral-authoritarian* stance (only allowing migrants in if they provide material benefit; excluding them from citizenship and cultural life; and only meeting minimum welfare requirements to comply with legal obligations) to a *social-conservative* stance which is more "capable of compassion for migrants, but does not recognise their right to belong: this favours protective (albeit measured) welfare provision" (2011, p. 25). One hope for the future is that the new Integration Strategy may prove a feasible pathway to permanent residence for those migrants who have made Malta their home, and that nationality should no longer be a factor in their entitlement to benefits.

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# Chapter 21

## Migrants' Access to Social Protection in the Netherlands



Frans Pennings

### 21.1 Overview of the Welfare System and Main Migration Features in the Netherlands

This chapter aims to provide an overview of the access to the Dutch social security by individuals in situations of international mobility, especially European Union (EU) citizens and third-country nationals residing in the Netherlands, as well as Dutch nationals residing abroad.

Since the very first Dutch statutory social security laws were drafted, the Dutch Government has studied foreign social security systems. The first schemes for employees, unemployment, disability and sickness were Bismarck-type social security schemes. For instance, eligibility for benefits was limited to workers and benefits were earnings-related and financed from contributions. During the Second World War, the Dutch Government, in exile in London, came to hear about the *Beveridge Report*,<sup>1</sup> which was written and published in this period, and established a Commission to write a white paper on the future of Dutch social security.<sup>2</sup> The report by the Dutch Commission was the basis of a series of national insurance schemes, i.e. schemes which cover all residents and offer flat-rate benefits. Such schemes covered the areas of old-age pensions (1957), survivors' benefits (1959), disability benefits (1967) and exceptional medical costs (1967).

Unlike the British government, the Dutch government did not choose to implement just one system of social security. Instead, national insurance schemes were added to the employees' insurance schemes. Both types of social security insurance

<sup>1</sup> W. Beveridge, *Social Security and Allied Services*, London 1942. Cmnd. 6404.

<sup>2</sup> Commission Van Rijn, *Sociale zekerheid*, Vol. II, The Hague, 1945.

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are still part of the present system. In addition to these insurance schemes, social provision schemes, such as the system of social assistance, were implemented. These schemes fill the gaps in protection which are not covered by the social insurance schemes.

### **21.1.1 Main Characteristics of the National Social Protection System**

The Dutch social security system consists of a number of social insurance schemes (outlined in Table 21.1), social provisions for specific groups, and a general regulation for assistance (Klosse and Vonk 2014; Pennings 2017).

The *Participatiewet* (Participation Act) completes the social security system. It provides benefits to any national or foreign citizen legally residing in the Netherlands who does not have sufficient means or is in danger of not having sufficient means to provide for the necessary cost of living. This Act provides that a person must first claim any other insurance benefits or special social provisions available before he/she is entitled to the benefit under this Act. The old age, survivors and child benefit insurance Acts are national insurance schemes that generally cover all residents. Insured persons are obliged to pay contributions for the old age and survivors insurance schemes. These contributions are calculated as a percentage of the annual wage or income and are levied by the Tax Office together with the income tax.

Child benefits are financed from public funds (taxes). The *Sociale Verzekeringsbank* (SVB – Social Insurance Bank) is an organisation set up to manage the funds, carry out the administration of these Acts and pay the benefits. Chapter 6 of the *Wet structuur uitvoeringsorganisatie werk en inkomen* (Wet Suwi – Work and Income Implementation Structure Act) gives rules on the constitution, tasks and competences of the SVB. Article 34 of the Wet Suwi provides that the SVB is charged with the administration of the old age benefits scheme, the survivors benefits scheme and the child benefit scheme. The *Uitvoeringsinstituut werkneemersverzekeringen* (Uvv – Administration of employees insurance schemes)

**Table 21.1** Insured risk

Social insurance schemes	National insurance schemes	Employees insurance schemes
Sickness		Employers are obliged to pay wages Sickness Benefits Act
Long-term disability		Disability Insurance Act
Old age	General Old Age Pension Act	
Survivors	General Survivors Act	
Children	General Child Benefit Act	
Medical	Health Care Insurance Act	
Unemployment		Unemployment Benefits Act

Source: Own elaboration

administers the ZW, the WAO, the WIA and the WW, and the TW (Supplements Act). The *Zorgverzekeringswet* (Zvw) is a national scheme that insures all residents for health care provisions, regardless of their income (Pennings 2017).

Social insurance schemes (national insurance schemes and employees insurance schemes) are mainly financed from contributions from insured persons and, in case of insurance schemes for employed persons, also the employers. In some cases, the government supplements the fund, in particular for old age benefits. The *Participatiewet* is paid by municipalities. Since 1989, the national insurance scheme *Algemene Kinderbijslagwet* (AKW – General Child Benefit Insurance Act) is no longer paid from taxes. In certain cases –for instance, for the AOW and the ANW (General Survivors Pension Act)-, (formerly) insured persons can also take out voluntary insurance for the periods between the ages of 15 and pension age if they were not compulsorily insured during that time. This is especially important for people who temporarily live outside the Netherlands and are not sufficiently insured abroad. Voluntary insurance is possible for individuals below the age of 65 who are compulsorily insured for at least one year for a maximum period of ten years. Voluntary insurance is possible if the person concerned notifies the SVB within one year since the ending of the compulsory insurance.

### ***21.1.2 Migration History and Key Policy Developments***

The Netherlands has a long history of immigration and emigration. After the Second World War, emigration gained importance especially due to the difficulties of finding a job in a context in which the whole economy had to be built up again. During the 1950s, roughly 350,000 people emigrated, with Canada, Australia, and the U.S being the most popular destinations (Jennissen 2011). This trend started to change during the 1960, as immigration started to exceed emigration. In particular, persons from the (former) Dutch colonies started to come to the Netherlands (Indonesia, Surinam), this adding to the inflows of people recruited to come to work in the Netherlands in order to respond to labour shortages (*guest workers*) (Jennissen 2011). In this context, the Netherlands signed agreements for work recruitment with Italy (1960), Spain (1961), Portugal (1963), Turkey (1964), Greece (1967), Morocco (1969), Yugoslavia (1970) and Tunisia (1971). Turkey, Morocco and Spain were the most important recruitment countries. Just like in other European countries, many guest workers- especially from Turkey and Morocco- actually decided to settle in the Netherlands. In 1975, the policy of recruitment of foreign labour force stopped, although immigration continued as a result of family reunification. This led to a significant increase of the immigrant population. By way of example, from 1975 to 2014, the Turkish origin population grew from about 55,639 to 396,414 individuals, whereas the Moroccan origin population increased from 30,481 individuals in 1975 to 374,996 in 2014 (Jennissen 2011).

Until 2007, family migration was the main source of migration to the Netherlands, accounting for almost 40% of all immigrants. Since 2007, labour migrants make up

**Table 21.2** Population in the Netherlands, 2018

Total population	17,081,507
Dutch background	13,218,754
Persons with migration background	3,862,753
Persons with Western migration background	689,030
Persons with non-western migration background	2,173,272
Marocco	391,088
Dutch. Antilles and Aruba	153,469
Surinam	349,978
Turkey	400,367
Other non-western	878,821

Source: CBS

the largest group, mainly from Central and Eastern European countries that joined the European Union in 2004 and 2007. As shown in Table 21.2, in 2018, there were little more than 3.8 million persons with a migration background residing in Netherlands, most of which with a non-Western background (WRR 2018).

As a general rule, immigrants can naturalize in the Netherlands after five years of legal residence, or three if they are married to a Dutch citizen (for more information regarding migration to the Netherlands, see Lucassen and Penninx 1997; CPB 2007; Ooijevaar et al. 2013; Dagevos 2011). It is also interesting to note that, in the Netherlands, immigrants from former colonies and lower wage countries performed poorly in the labor market. Around 2000, a heated public debate started over the (perceived) low levels of integration of immigrants in the Dutch society. Core elements of the policies developed after the turn of the century are to restrict family migration and pressure immigrants to learn Dutch.

Regarding the link between migration and social security policy, until 2000, the Netherlands had a system which allowed the export of most benefits, including to outside the EU. Exceptions to this included public assistance and unemployment benefit. The export became more restrictive with the *Wet beperking export uitkeringen* (Benefit Restrictions (Foreign Residence) Act), which went into effect on 1 January 2000, and limits the right to export benefit to countries with which agreements have been made which enable export of benefit. Export within the EU was not affected. During Parliamentary debates on the Law, the Government announced the intention to make agreements with all countries to which export of benefit is relevant. Indeed, treaties have already been made with most of the countries in which large numbers of claimants reside. These treaties have to ensure that reliable information will be given on issues such as identity, death, civil status, family situation, work, income, address, training, detention and health position of the claimant and his/her family members. The provisions of the treaty require the foreign benefit administration to verify such data and allow the Dutch benefit administration to check these data abroad. The objective of the treaties is to treat beneficiaries abroad

in the same way as in the Netherlands (where the required information is already available).

Another development relevant to foreigners is the *Koppelingswet* (Linking of Insurance to Status Law). This Law provides that persons who do not have a permanent residence permit are not insured and not entitled to benefit as long as they stay in the Netherlands. When they leave the Netherlands, they may claim remaining benefit rights, if any, providing that they satisfy the condition of the *Wet beperking export uitkeringen*, discussed above. After the turn of the century, there were also changes in the level of benefits payable to persons residing outside the EU. These affected family benefits and parts of the disability insurance. For these benefits, the levels were adjusted to that costs of living in the State of residence.

## 21.2 Migration and Social Protection in the Netherlands

The Dutch social security system has witnessed important changes over the years, as it became much more focused on providing access to social benefits for those residing in the territory of the Netherlands. This implies that within the Netherlands, migrants are treated in the same way as nationals, provided they are legally staying in the country. Exceptions exist for those recently arrived (less than five years, which is relevant for accessing public assistance). This has been largely influenced by EU law, in particular, Directive 2004/38 (for an in-depth analysis of EU law, see Pennings 2015). Otherwise, there are no substantial differences between the various groups in terms of level of benefit, eligibility conditions, etc. Nevertheless, the situation might be different for migrants who have not spent all their life in the Netherlands, want to return to the country of origin, or have family members in other countries. The EU rules on coordination of social security (Regulation 883/2004) are particularly relevant for specific groups of non-national residents, such as seasonal workers, frontier workers, undocumented workers, or short-term residents.

When it comes to employees' insurance schemes (sickness, unemployment benefit and disability benefit), persons working in the Netherlands – regardless of their nationality – are treated in the same way as national residents in terms of conditions of access to specific benefits. There are no separate eligibility conditions, differences in level of benefits, or any differentiated duration of benefits for foreign residents. EU nationals can invoke periods fulfilled in other EU Member States to qualify for the unemployment benefit. The duration of this benefit depends on the duration for work, for which periods of employment in other EU countries are particularly relevant. However, periods of employment outside of the EU do not count for accessing unemployment benefits. For sickness and disability benefits, there are no specific eligibility conditions related to the period of insurance. If a person still has an employer, he/she is not paid sickness benefits, but instead the employer has to continue to pay wages (in principle, by covering 70% of the wage). There are no differences in this regard between national citizens, EU nationals and third-country

nationals. Sickness benefits and disability benefits do not require any prior periods of contribution.

As regulated by the EU law, unemployment benefits are exportable only for three months within the EU/EEA. Disability and sickness benefits can be exported to countries outside of the EU only if there is a bilateral social security agreement allowing exportability. In order to access the benefits of the national schemes, claimants must reside in the Netherlands. If one works in the Netherlands, this condition is fulfilled. The situation might be different for individuals who are not working, as their possibility to access specific social benefits could depend on their personal circumstances. In that case, it is relevant whether there centre of interest is, in view of all the circumstances, in the Netherlands. If they have also links with another country, it can take some time after entering the Netherlands before this condition is fulfilled. National insurance benefits can be exported also to countries outside the EU, but only if there is a bilateral social security agreement in this regard. The exportability of old age benefits is always ensured, but if there is no bilateral agreement, only the old age benefit is exported at the rate of 50% of the married person pension, which is lower than that the rate for a single person.

### **21.2.1 Unemployment**

Only those employed in the Netherlands qualify for unemployment insurance benefits (Pennings 1990; Pennings and Damsteegt 2009). After 26 weeks of employment during a period of 36 weeks, one is entitled to unemployment benefits if he/she loses at least five hours of work a week. In cases of full unemployment, the benefit is 75% of the daily wage during the first two months, after which it decreases to 70% (with a maximum of 70% of EUR 219 a day in 2020).<sup>3</sup> A person whose benefit is below the applicable subsistence income may be eligible for a supplement on the basis of the *Toeslagenwet* (TW – Supplements Act). In order to receive unemployment benefits, individuals must register as job-seekers, regularly prove job search and be available for work. The duration of the unemployment insurance benefit is related to the length of employment and claimant's age. The benefit can be granted for a minimum period of three months, up to a maximum of twenty-four months.<sup>4</sup>

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<sup>3</sup> <https://www.uvw.nl/particulieren/bedragen/detail/maximumdagloon>

<sup>4</sup> The duration of unemployment benefits is longer than 3 months if, in each of the four calendar years lying in the five calendar years immediately before the first day of unemployment, the claimant received wages over at least 208 hours. If this condition is satisfied, the duration of benefit is one month for each year that counts for the employment past for the first ten years of work. Thus, if the employment past is eight years, the total duration of benefit entitlement is eight months. Years in which over 208 hours wages were received that exceed 10, count for half a month. This means that after 20 years of work, one is entitled to unemployment benefits for 15 months.

There is no specific scheme of unemployment assistance in the Netherlands. However, when the right to unemployment insurance benefits has ended, employees born before 1965 who have become unemployed after they have reached the age of 50 may claim a benefit under the Income Provision for Older and Partially Disabled Unemployed Employees Act (IOAW). One specific condition for this is that the (family) income is below the relevant social minimum. Other employees may claim a benefit under the terms of the *Participatiewet* (Public Assistance Act) if they satisfy a means test on income and capital.

For access to unemployment insurance benefits, EU and non-EU foreign residents are treated in the same way as Dutch nationals. Persons (nationals and foreigners) can receive the unemployment benefit abroad when they are on holidays (subject to some conditions). Due to the EU coordination rules, the export of unemployment benefits to other EU member states is possible for three months. If one stays abroad for a longer period, the unemployment benefit is no longer paid. After six months, all the remaining rights are lost if one returns. Nationals residing abroad in non-EU countries cannot claim unemployment benefits from the Netherlands. This benefit is rarely covered in the bilateral social security agreements signed by the Netherlands.

### **21.2.2 *Health Care***

In order to access health care, all persons residing in the Netherlands and all non-residents working in the Netherlands must buy a private insurance regulated by the *Zorgverzekeringswet* (Zvw – Health Care Insurance act). All persons obliged to buy an insurance must pay contributions, but those with a low income receive a supplement compensating the costs. In this respect, there is no difference between persons based on nationality.

The Zvw includes self-employed and unemployed persons, regardless of their income. Non-residents living in another EU Member State who receive a Dutch pension are also covered by this Act. If they receive a pension from the Netherlands only, they are covered by the Zvw, they have to pay contributions in the Netherlands, and they are entitled to benefits in kind in the country of residence. A person who is within the personal scope of the Zvw is obliged to buy an insurance from a private company. These private companies offer the same basic insurance, although there may be differences in the extent of the choice the insured persons have in care provider. Companies determine the contribution rates for their insurance and that is their major instrument of competition. There are no limitations on which institutions/organizations can make a collective contract with an insurance company. Employees often choose the company with which their employer has made a collective contract. Health insurance companies may not refuse any applicant for the basic insurance and contributions for the basic insurance are the same for all buyers of a particular policy, independently of their state of health. The health care needed by the insured is paid by the insurance, although there is a statutory regulated annual

own risk of EUR 385 per person (from which care by general practitioners is excluded).

Non-residents who work in the Netherlands (often, frontier workers) are insured in the Netherlands, for which a specific insurance agency was created. Non-residents who are not working will only be covered by the insurance if they are pensioners receiving only a pension from the Netherlands. Persons are treated in the same way regardless of nationality.

Persons who become ill generally receive sick pay from their employer (i.e. 70% of the wage up to 70% of the maximum daily wage relevant to social security, 219 euro a day in 2020). The Civil Code that deals with this does not distinguish on the basis of nationality. The sick pay is exportable within the EU. It can also be exported outside of the EU only if there is a bilateral agreement in place. Sick pay is payable for a maximum period of 24 months. Persons who do not have an employer anymore are eligible for sickness benefit under the *Ziektewet* (ZW – Sickness Benefits Act). For this, no prior period of insurance is required and foreign residents must meet the same eligibility conditions as national residents. For export, the same rules apply as for sick pay.

### **21.2.3 Pensions**

Old age pensions are residence schemes (i.e. all residents are insured, but also non-residents working in the Netherlands) paid from contributions and taxes. Everyone earning a certain income has to pay contributions. Individuals who do not have sufficient income are also insured, and this does not affect the acquisition of benefit rights. In order to access a Dutch pension, individuals who are at least 66 years old must have contributed for at least a year (the age will rise in the coming years, according to a schedule in the Act). The level of old-age pension depends on the duration of insurance as insured persons acquire 2% of the pension for every year of insurance (thus after 50 years they have acquired a full pension). It is possible to buy voluntary insurance for the missing years, but most insured persons consider this possibility as being too expensive. For those having acquired an incomplete pension, a supplement is payable under the *Participatiewet* (the already mentioned public assistance scheme).

EU and non-EU foreign residents can access an old-age pension in the Netherlands under the same conditions as national residents. However, persons who do not fulfill the full 50 year periods receive a lower pension (this rule applies to Dutch nationals as well, but is- in practice- more relevant to non-nationals). They may export a pension from the country of origin, but if that is not the case, and their full income is below the public assistance rate, a supplement is payable from the Public assistance scheme (*Participatiewet*). Income and property abroad is taken into consideration for this social assistance supplement.

The old-age pension is not means-tested (in fact, there is no means tested non-contributory old-age pension in the Netherlands; there is merely access to social

assistance for those who do not get a full old age pension). The old-age pension can be exported to any country, but outside the EU, single persons can receive the single rate pension only if there is a bilateral agreement. The single pension rate is 70% of the standard (which is the same as the public assistance rate for a family). If this condition is not fulfilled, pensioners receive the married person's rate, that is 50% of the standard (2 married persons both receive this rate, but for a single person, the benefit is lower). For persons who were and/or are non-resident, but worked in the Netherlands, the same conditions and rules apply (one year of work leads to acquisition of 2% of the full old-age pension).

As for invalidity benefits, a main element of the Act on disabled persons (*Wet inkomen naar arbeidsvermogen* – WIA) is the distinction between persons who are at least 80% permanently disabled and others. This distinction is elaborated under the WIA in the *Inkomensvoorziening volledig arbeidsongeschikten* (IVA – Income Provision for the Fully Disabled) for the first group and the *Werkhervattingssregeling gedeeltelijk arbeidsgeschikten* (WGA – Scheme on the Take-Up of Work by Persons Who Are Partially Able to Work) for the second group. IVA and WGA may seem two different types of benefits, but they are payable on the basis of the same Act, the WIA. The idea underlying IVA is that persons who are permanently disabled should be given a good income provision. On the other hand, WGA covers persons who are disabled between 35% and 80%, and individuals who are disabled for 80% but whose disability is not considered permanent. The threshold for WIA is 35%, hence higher than for WAO (15%). WGA refers to its recipients as 'persons who are partially able to work', instead of 'partially disabled', since the main focus is on their ability to work.

WGA recipients receive a *wage-related benefit* if they satisfy conditions on the employment past (if they do not satisfy these conditions they qualify for the so-called wage-supplement or follow-up benefit) and the duration depends on their employment past. The rules for entitlement and duration of this benefit follow those of the WW (Unemployment Benefits Act). After the right to the wage-related benefit has expired, individuals receive a wage supplement if they have an income of at least 50% of their earning capacity. Those who do not have such income receive a so-called follow-up benefit. The wage supplement is relatively generous, whereas the follow-up benefit is very low. These rules are meant to encourage incapacitated persons to take up work again. For persons who are disabled less than 35%, there is no income provision under the WIA. Employers are supposed to keep these persons in work and if they lose their job, they have to rely on WW benefit or public assistance.

These benefits are granted to EU and non-EU foreigners under the same conditions as those applied to Dutch nationals. When residing in another Member State they can claim these benefits from the Netherlands under the rules of Regulation 883/2004; if residing outside the EU, they receive these benefits if a bilateral agreement is made.

## ***21.2.4 Family Benefits***

Maternity benefits cover employed women, although a scheme for self-employed women was also recently introduced. These schemes apply to both Dutch nationals and foreigners residing or working in the Netherlands. Maternity benefits are granted for 16 weeks and do not require a certain minimum period of employment or insurance, but one has to be insured at the beginning of the pregnancy leave. Export of these benefits is regulated by the EU coordination regulation. Export outside the EU depends exclusively on bilateral agreements. There is no specific scheme of paternity benefits in the Netherlands. There is a parental leave granted for a period of 26 weeks and in some collective agreements, employers pay part of the wage during the parental leave.

Insured persons- either national or foreign residents- are entitled to child benefits for children under the age of 16 who belong to his/her household; or those under the age of 18 who are supported by the applicant to a considerable extent. The insured person is entitled to child benefits for children of 16 or 17 years of age, provided those children are fulfilling the obligations of the Act on compulsory education or are exempted from these in order to get a so-called start qualification<sup>5</sup>; are attending school abroad or; are unemployed and registered with Uwv. In principle, insured persons who live outside the Netherlands are not entitled to family benefits, except for those subject to wage tax in the Netherlands or subject to Dutch law under EU Regulation 883/2004. An insured person cannot claim child benefits for children who live outside the Netherlands on the reference date and a stay of more than three months abroad is equated with living outside the Netherlands. These exclusions do not apply when a treaty is made between the Netherlands and the country in which the insured person or child resides. This includes the countries within the territorial scope of Regulation 883/2004. Child benefits are paid from taxes and as soon as a person is a resident of the Netherlands, s/he receives the benefit. If the child does not live in the household, the claimant must prove that s/he contributes to the costs of living of the child. If the child lives outside the EU, a bilateral agreement is necessary to ensure payment. Recently, the level of family benefits has been reduced for non-EU countries, taking into account the costs of living in that country. Sometimes it is difficult to transfer money to the child in order to show that one contributes to the costs of living of the child. Within the EU, there is a consistent system but outside the EU, this has been regulated by bilateral agreements.

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<sup>5</sup>This is a qualification level that is deemed necessary to enter the labour market in order to have better chances to get work; only when such a qualification is obtained one is no longer subject to compulsory education, and if the child cannot find work he/she is accepted as unemployed for this Act.

### ***21.2.5 Guaranteed Minimum Resources***

Residents in the Netherlands who do not have sufficient income for the basic costs of living are eligible for public assistance under the *Participatiewet* (Public Assistance Act). The rates for this benefit are laid down in the Act; for actual entitlement and the level of benefit, the income and resources (capital) of the claimant are relevant, including that of the person he/she is living with. Claimants must seek work and accept job offers, unless they are exempted from this. Claimants are now also expected to do some unpaid work in exchange for their benefit, but the actual forms and enforcement of the rules vary between municipalities. This benefit is payable as long as one satisfies the conditions.

Public assistance is an area where the link to the Dutch territory has been strengthened in the last decades. Persons residing abroad cannot claim public assistance from the Netherlands. EU and non-EU foreigners residing in the Netherlands for less than three months are not entitled to claim public assistance. After this period, there is the risk of being expelled if one claims the benefit. After five years of legally residing in the Netherlands, there is full equal treatment for both EU and non-EU nationals. Otherwise, there are no differences in conditions (level, preparedness to work, waiting periods, etc.).

### ***21.2.6 Bilateral and Multilateral Social Security Agreements***

The bilateral/multilateral social security agreements signed by the Netherlands do not give a full solution to access to benefits (Van Everdingen et al. 2014). The agreement with the largest group of foreigners living in the Netherlands (from Surinam) allows export of some benefits only to that country. Since there is no significant new migration inflow from this country (the main inflows from Surinam took place in the 1970s), there is no real need to help with aggregation of periods, etc. The bilateral agreement with Turkey is interesting because it supplements multilateral agreements (of the Council of Europe and also Decision 3/80). It covers access to disability benefit and the export of pensions and family benefits (van der Mei and Eisele 2012). The bilateral agreement with Morocco also assists the covered persons in exporting benefits, although, in this case, provisions have been inserted in order to reduce family benefits to the costs of living in Morocco.

The agreements with the countries that represent the three main destinations for Dutch nationals residing abroad (USA, Canada, Australia) are meant in particular for those who permanently left the Netherlands. They help to access Dutch disability benefit and export old-age pensions. Issues as minimum benefits and unemployment benefits are outside the scope of these agreements.

## 21.3 Conclusions

The Dutch system treats foreigners working in the Netherlands in the same way as national residents when it comes to accessing unemployment benefits, disability benefits, old-age pensions and family benefits. For persons coming to the Netherlands and not working, there is a period during which they are not eligible in which they have to acquire the status of resident. Persons claiming public assistance may lose their residence status if they claim this benefit during the first five years of residence. Persons coming from other Member States or from outside the EU may have a gap in the acquisition of old-age benefits in the Netherlands, since this is a pro rata benefit. However, they may have acquired benefit in their countries of origin. If not, they can claim public assistance, but that means that their other pension rights and property are taken into account.

Export of disability and old-age benefit is guaranteed within the EU, but a bilateral agreement is needed for export outside the EU. Export of unemployment benefits is possible under serious restrictions only, whereas the public assistance benefit cannot be claimed from abroad. Also, there is a tendency to reduce the level of benefit payable to other countries, taking the costs of living into account. There is now considerable support for this in Dutch politics and some political parties in Parliament would even prefer to terminate export of the non-contributory benefits to countries outside the EU. So far, only an act on the reduction of family benefits and part of disability benefit has been adopted, although this requires a revision of the bilateral agreements that are currently in place.

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# Chapter 22

## Migrants' Access to Social Protection in Poland



Agnieszka Chłoń-Domińczak

### 22.1 Overview of the Welfare System and Main Migration Features in Poland

The main objective of this chapter is to discuss the Polish social security system, with particular focus on the access of national residents, non-national residents and non-resident nationals to its different components in the light of key migration developments.

#### 22.1.1 *Main Characteristics of the Polish Social Security System*

In 2016, the social protection in Poland comprised 20.3% of the Gross Domestic Product (GDP), which was below the European Union (EU) average (28.2%). The financing of the Polish social protection system relies on social contributions, which finance more than two thirds of social benefits and transfers. This, together with the high degree of decommodification, places Poland among the countries characterised as a conservative-corporatist model of welfare state regime (Esping-Andersen 1990), but with gradual shift towards a liberal regime after the reforms introduced in the past.

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The social security system covers benefits in the area of unemployment, health care, pensions, family benefits and social assistance. The organisational structure of the Polish social security system is relatively complex, involving institutions at central level and different levels of regional authorities (Table 22.1).

According to Law of 4 September 1997 on governmental administration sections, the “social security” section in Poland covers social insurance and social security; old-age pension funds; social assistance; government programmes for social assistance; social benefits, employment, social and vocational rehabilitation of people with disabilities; support combatants and persecuted persons; the coordination of the social security systems and public benefit activity.<sup>1</sup> The “social security” section falls predominantly under the competence of the Minister of Family, Labour and Social Policy, whereas the section health is managed by the Minister of Health. Benefits administration for unemployment, social assistance and family benefits is conducted at the regional and local level. As depicted in Table 22.1, the overall coordination of regional labour market and social policies is conducted at the regional level, by specialised Voivodship Labour Offices (for unemployment) and Regional Social Policy Centres and Social Policy Divisions of Voivodship offices.

There are two major sources of financing of the Polish social security system: taxes and social insurance contributions. Social insurance contributions finance around two thirds of total social protection expenditure (ESSPROS database). Family benefits and social assistance are financed from taxes, while unemployment, pensions, sickness, maternity and health care benefits are financed from social insurance contributions. The type of financing also determines access to benefits. For benefits financed by social insurance contributions, the eligibility criteria are related to contribution payments, whereas for tax-financed programmes, the benefits depend on household situation or level of income.

In recent years, the most important changes in the Polish social protection system were in the area of family benefits. The new benefit for bringing up children (“Family 500+”) was introduced in 2016 as a universal benefit. Consequently, the family benefit expenditure in Poland rose by more than 1% of GDP and the overall family spending exceeded the EU average. This change led to the reduction of poverty risk for families with children, but it also had important labour market outcomes with reduced participation of young women on the labour market (Magda et al. 2018).

## 22.1.2 *Migration History and Key Policy Developments*

From the middle of the nineteenth century, the international movement of persons played an important role in Poland’s demographic and labour market development (Kaczmarczyk and Okolski 2008). Many Poles migrated, particularly to Germany,

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<sup>1</sup>(Journal of Laws of 2015 Text 812, as amended)

**Table 22.1** Organisational structure of social security in Poland

Ministry of Family, Labour and Social Policy		Ministry of Family, Labour and Social Policy		Ministry of Agriculture and Rural Development		Ministry of Health
Unemployment		Social Assistance		Old-age and other pensions, accidents at work and occupational diseases as well as sickness and maternity		
Central		For employees and those deemed employees		For farmers		Health care
Central	Unemployment	Family Benefits	Social Assistance	The Polish Social Insurance Institution (ZUS) Branches (43)	Agricultural Social Insurance Fund (KRUS) Regional branches (16)	National Health Fund (NFZ)
Regional	Voivodeship (Provincial) Labour Office (16)	Social Policy Divisions of Voivodeship Offices (16)	Social Policy Divisions of Voivodeship Offices (16)	Regional Social Policy Centres (16)	Poviat (district) Centres of Family Assistance (380)	NFZ Voivodeship branches (16)
Poviat	Poviat (district) (Urban) Labour Offices (341)			Inspectories (210)	Local units (256)	Voivodeship branch representatives

(continued)

Table 22.1 (continued)

		Ministry of Family, Labour and Social Policy		Ministry of Family, Labour and Social Policy		Ministry of Agriculture and Rural Development		Ministry of Health	
				Old-age and other pensions, accidents at work and occupational diseases as well as sickness and maternity					
				For employees and those deemed employees		For farmers		Health care	
Community	Unemployment	Family Benefits	Social Assistance	Social assistance/ benefit centres (2497)	Local offices (70)				
Commune		Appropriate organs (local/city council offices or centres for social assistance/benefit or other organisational units of territorial local government) (2497)							
Financing	Labour Fund contribution from employers (2.45% of company wage bill <sup>a</sup> )	Taxes/state budget	Taxes/state budget	Contributions for social insurance/state budget subsidy 19.52% for old-age pensions, 11% for disability, 2.45% for sickness and variable contribution for work injury		Contributions for social insurance/state budget subsidy		Health care contributions: 9.72%	

Source: (Social Insurance Institution 2017)

<sup>a</sup>Labour Fund contribution is not paid for parents returning from parental leaves as well as recently hired people who were unemployed and are older than 50 years

in the 1970s and 1980s, when the estimated long-term outflow of people amounted to between 1.1 million and 1.3 million (3% of the total population) and short-term migration added another 1 million (*Ibid*). The outflows accelerated significantly after the EU accession. The initial large-scale movement of Polish workers between 2004 and 2007 slowed down after the economic crisis, but accelerated again in recent years, albeit at a slower pace. According to estimates, the outflow of workers had a positive impact on the Polish labour market on the short-run, by reducing the unemployment level and moderately increasing the wages. However, recent demographic projections point towards a quickly shrinking labour force, mainly caused by low fertility levels since early 1990s. Thus, the economic growth potential in the long-run is expected to be more hampered, compared to the short-run (Chłoń-Domińczak 2018). The long-term challenge of declining and ageing labour force, caused by the demographic developments leading to fast population ageing, is becoming visible.

Some of the losses on the labour market are mitigated by increased employment of immigrants. Gradziewicz et al. (2016) highlight that the share of companies that declared employment of at least one foreigner increased from 5% in 2010 to 13% in 2016 and further to 30% in 2018 (National Bank of Poland 2018). The share of migrants in total employment and covered by mandatory social insurance also increased (Buchholtz et al. 2017). However, the available data indicates that significant share of migrants in Poland might work in the informal market or on contracts that do not give access to social security, this increasing their exposure to social risks.

Measuring the scale of migration in Poland, both inflows and outflows, is a difficult challenge. Permanent migration is measured by the registers of residents. Statistics Poland data on main directions of immigration and emigration for permanent residence indicate that, between 2004 and 2014, the outflows were higher than the inflows. Right after the economic crisis, the net outcome was close to zero, due to the reduced flow of emigrants, but in 2013-2014 the level increased again, leading to an increased negative balance.

The source of information on permanent changes related to emigration is the register of permanent residents. However, many Poles migrating to another country do not inform the register, so the official numbers are underestimated. In the Polish statistics, permanent residents who stay abroad for more than 3 months are called temporary migrants. The size of this group is estimated on the combination of data from population censuses (in 2002 and 2011) and the Polish Labour Force Survey (LFS) data (Kaczmarczyk and Okolski 2008; Statistics Poland 2016; Chłoń-Domińczak 2018).

Estimates of the scale of migration from Poland since 2004 are made by Statistics Poland. These are people who remain permanent residents in Poland but have lived abroad, sometimes for many years. The stock of residents of Poland abroad after the EU accession more than doubled, mainly due to the increased migration to EU countries. The share of Polish nationals residing in other EU countries increased from 75% in 2004 to more than 83% in 2016. The top two destinations are the United Kingdom (UK, 788,000 people in 2016) and Germany (687,000). This also means that the majority of Polish nationals abroad are covered by the social security based on the EU regulations.

According to the Office for Foreigners, the number of foreigners with residence permits increased from 175,000 in January 2014 to 325,000 in January 2018. More than half of these permits were issued for temporary stay. Most residence permits are linked to the right to employment, which in some cases need to be additionally confirmed by work permits or declarations of employers. Until the end of 2017, two types of documents were issued: (i) work permits for foreigners issued by voivods and (ii) declarations of intent to entrust work to a foreigner (for seasonal work), which employers placed in the powiat labour office, which could be used for selected nationalities. In 2017, there were more than 235,000 issued work permits, which is almost 6.5 times higher compared to 2010. Furthermore, there were more than 1.8 million declarations of intent to hire foreigners issued in 2017, that is ten times more than in 2010. More than 90% of declarations concerned foreigners from Ukraine, followed by former soviet countries (Belarus, Moldova, Georgia, Armenia) and Russia.

From January 2018, short-term work may be performed based on the so-called “new” statement on entrusting work to a foreigner and a permit for seasonal work. Citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine are still entitled to work in connection with the declaration, while seasonal work permits apply to citizens of all third countries. This shows the continuous high interest of foreigners to work in Poland and the high demand of Polish companies to hire foreigners, due to shortages on the Polish labour market caused by the emigration and population ageing.

## 22.2 Migration and Social Protection in Poland

The overall regulations related to the conditions of entry, transfer, residence and exit of foreigners on the Polish territory are defined by Law of 12 December 2013 on foreigners.<sup>2</sup> The Law regulates important provisions related to the right to social benefits, but also specifies conditions related to work permits depending on foreigners’ coverage of selected social security provisions. Article 114 specifies that the foreigner may receive a temporary residence and work permit (*zezwolenie na pobyt czasowy i pracę*) under several conditions. One of them is being covered by health insurance in the national health care system or having a private health insurance covering the cost of medical treatment in Poland. Another condition is having sufficient income to cover the cost of living of the migrant and his/her family in Poland, understood as the monthly income that exceeds the income threshold for benefits from social assistance for the migrant and dependant family members. The latter condition is also applicable for temporary residence permits for delegated workers

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<sup>2</sup> Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach, 2013 <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130001650>

(article 139a). Similar conditions also apply for temporary residence permits in order to use long-term mobility (article 139o and 139 s). The conditions related to access to health insurance and income above the social assistance thresholds also hold for temporary residence permits to study in higher education institutions or conduct scientific research (articles 144, 151, and 187). In the case of the temporary residence to connect with the family, the condition related to access to health-care coverage applies.

The access to social protection of immigrants in Poland is further specified in legal acts defining the accessibility to social security benefits. For benefits related to contributions, the main eligibility criterion is the payment of contributions. Therefore, foreigners who work in Poland are covered by these types of schemes. For benefits that are means-tested or depend on the family status, the eligibility depends on the legal status of the immigrant and his/her residence in Poland.

Based on the EU Treaty, the legal framework in Poland also recognises the rights of non-national EU citizens in the same way as the rights of the Polish citizens. As explained below, this leads to some differences in access to benefits between migrants from the EU and non-EU countries.

Access to specific benefits depends on employment status. The regulations on the employment of foreigners in Poland and of Polish workers abroad are included in Chap. 16 of the Law from 20 April 2004 on employment promotion and labour market institutions.<sup>3</sup> Foreigners who are employed by the employment agency in Poland need to have a contract with the institution, who employs them as temporary workers, including specification of social insurance coverage. The Law enumerates foreigners who have a right to work in Poland, including EU/European Economic Area (EEA) citizens or citizens of other countries who have a right to free movement according to the agreement with the European Community and its Member States as well as their family members. For non-EU citizens, it applies to refugees and people receiving protection in Poland, those having permanent residence permit or long-term EU resident permit in Poland, foreigners having residence permit due to humanitarian reasons, those with temporary residence permits that allows taking up employment in Poland or those holding a residence document issued according to article 1, section 2, letter a of the Council Directive no 1030/2002.<sup>4</sup> The work permit is required for third-country nationals, unless the foreigner fulfils additional conditions specified in the Law.

The access of foreigners to social security is thus based on rules of social security coordination that covers EU and European Free Trade Association (EFTA) countries and bilateral social security agreements with non-EU countries. The following social security agreements are currently in force: Yugoslavia (covering currently

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<sup>3</sup> *Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy*, (Journal of Laws from 2004, No 99, Item 1001)

<sup>4</sup> The requirement to have the employment permit does not apply to foreigners with temporary residence permits for studies or research and family members of Polish citizens or refugees and other people staying in Poland receiving protection

Bosnia and Herzegovina, Serbia and Montenegro),<sup>5</sup> the Republic of North Macedonia,<sup>6</sup> the United States of America (USA),<sup>7</sup> Canada,<sup>8</sup> the Republic of Korea,<sup>9</sup> Australia,<sup>10</sup> Ukraine,<sup>11</sup> Moldova<sup>12</sup> and Belarus.<sup>13</sup>

## 22.2.1 *Unemployment*

The access to unemployment benefits and active labour market policies is regulated by Law of 20 April 2004 on employment promotion and labour market institutions. All unemployment-related policies and instruments are financed from the Labour Fund. This is a public fund, financed from employers' contributions amounting to 2.45% of the wage bill (Table 22.1).

Unemployment benefits are granted to unemployed people who have worked for at least a year in the past 18 months and earned at least minimum wage. The benefit does not depend on earnings. The basic amount is paid to the unemployed with 5–20 years of employment record and varies depending on the unemployment period (higher for the first 3 months of unemployment and lower for subsequent months). Those with shorter employment records (below 5 years) receive 80% of the basic unemployment benefit, while those who worked longer than 20 years receive 120% of the benefit.

As mentioned, the Law on employment promotion and labour market institutions enumerates the groups of foreigners eligible to work (who can subsequently receive unemployment benefits) in Poland. These include: EU/EEA citizens and those with similar status and their family members, those with residence permits (permanent or temporary) in Poland or long-term EU residents and their family members, refugees, those who have permission to stay in Poland due to humanitarian reasons or covered by temporary protection.

In the case of registration of non-nationals in the unemployment office, the *starosta* informs the Border Guards or the voivod about the registration. Foreigners with temporary residence permits for studies, family members, victims of human trafficking and other reasons not related to employment have access to active labour market services, but not unemployment benefits and stipends paid during the period of training or post-diploma studies.

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<sup>5</sup> Agreement of January 16, 1958 (Journal of Laws 1959, item 1914).

<sup>6</sup> Agreement of April 6, 2006 (Journal of Laws from 2007, No. 229, item 1686).

<sup>7</sup> Agreement of April 2, 2008.

<sup>8</sup> Agreement of April 2, 2008.

<sup>9</sup> Agreement of February 25, 2009.

<sup>10</sup> Agreement of October 7, 2009.

<sup>11</sup> Agreement of May 18, 2012.

<sup>12</sup> Agreement of September 9, 2013.

<sup>13</sup> Agreement signed in February 2019.

The Law also specifies the periods counted as eligibility for unemployment benefits, which include employment in Poland or an EU country, as well as employment abroad in non-EU countries only if the person paid a contribution to a Labour Fund amounting to 9.75% of the average wage for each month of employment. The condition to pay supplementary contribution does not apply for repatriates.

The payment of unemployment benefits is conditional on the residence in Poland. Unemployed people who are staying abroad for less than 10 days per calendar year maintain the right to the unemployment benefit if they inform the powiat labour office. This does not apply to the unemployed who seeks employment in other EU countries. In this case, the benefit is paid up to 3 months of staying abroad (it can be extended up to 6 months).

## 22.2.2 *Health Care*

The access to health-care benefits is defined in the Law of 27 August 2004 on Health Care Services financed from Public Means.<sup>14</sup> Article 2 of the Law specifies that access to in-kind benefits is granted to all people who are covered by health care insurance. There is no requirement of period of paying contribution before becoming eligible for in-kind benefits (including primary care, specialised ambulatory care and hospital services).

Insured non-nationals who pay health care contributions based, *inter alia*, on their employment, or on the voluntary basis have access to benefits in kind. The Law lists all types of insured people, including Polish/EU/EFTA citizens, nationals of other countries who hold relevant residence permits and persons who have been granted refugee status or subsidiary protection in Poland; as long as they pay contributions on mandatory or voluntary basis. For insured people, there is no difference in access to health care services depending on the nationality – Polish citizens and foreigners enjoy the same rights. There are also several categories of people who are not insured, but still eligible for health care services (those who meet the social assistance income criterion). Health care services are also guaranteed for children below age 18, Polish citizens and foreigners who obtained refugee status or subsidiary protection, or a temporary residence permit granted for family reunification.

In-kind benefits are provided on the Polish territory. However, all insured people based on the European Health Insurance Card have access to medically necessary, state-provided health care during a temporary stay in other EU countries, Iceland, Liechtenstein, Norway and Switzerland, under the same conditions and at the same cost as people insured in those countries. Similarly, Polish nationals residing in the EU countries have access to medical services in Poland. Polish citizens residing in

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<sup>14</sup> Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20042102135>

non-EU countries do not have access to in-kind services in Poland. They can receive emergency treatment, but they are obliged to finance it from their own sources.

The access to sickness benefits in cash is based on the social insurance principle and the only requirement relates to the payment of the contribution which is mandatory for all salaried workers and people performing their job based on employment contracts. The contribution rate for sickness insurance is 2.45% of the gross salary paid by the employee, or in the case of self-employed – declared income not lower than 60% of average wage. The contribution for disability pensions is mandatory for all groups of insured and it is 8% of salary (6.5% paid by the employer and 1.5% paid by the employee). Disability pensions are paid upon the assessment of long-term full or partial incapacity to work.

The Laws regulating access to health benefits in cash do not refer specifically to nationality with regards to access to benefits (Law of 13 October 1998 on Social Insurance System,<sup>15</sup> the Law of 25 June 1999 on cash benefits in the case of sickness and maternity<sup>16</sup> and the Law of 17 December 1998 on pensions from Social Insurance Fund<sup>17</sup>). The Law on Social Insurance indicates that the Social Insurance Institution provides Border Guards and State Employment Inspection with information on the insured foreigners and their employers.

The short-term sickness benefits (in principle, 80% of salary) are granted after the waiting period of 30 days. Self-employed people are covered by the sickness insurance on a voluntary basis with longer working period (90 days). Prior to receiving sickness benefits, employees receive salaries from their employers (generally for the first 33 days of sickness). The sickness benefit is payable upon the sick leave issued by a doctor. Short-term sickness benefits are in general paid out in Poland. In case of travel abroad, the benefit may be suspended only if the doctors' prescription does not allow the sick person to travel or recommends the stay at home.

Disability pensions are paid in case of long-term permanent or temporary incapacity to work, assessed by social security doctors. As a rule, disability pensions are granted for maximum 36 months and they are re-assessed afterwards. Disability pensions are calculated according to the defined-benefit pension formula specified in Law on pensions from Social Insurance Fund. Partial disability pension amounts to the 75% of the full disability pension. To claim a disability pension, a person needs to be covered by social insurance at least for 5 years (this period is shorter for people younger than 30). For EU/EEA nationals and non-EU nationals from countries covered by bilateral agreements, this period also includes periods of social insurance in the foreign country. The main qualifying condition for claiming the disability pension is the coverage by the social insurance system in Poland, regardless on the nationality. Disability pensions can also be paid in another country: in

<sup>15</sup> Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19981370887>

<sup>16</sup> Ustawa z dnia 25 czerwca 1999 r. o świadczeniach pieniężnych w razie choroby i macierzyństwa, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19990600636>

<sup>17</sup> Ustawa z dnia 17 grudnia 1998 r. o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19981621118>

the case of EU countries, based on the Directives of social security coordination and for non-EU countries, based on bilateral social security agreements.

### 22.2.3 *Pensions*

Old-age pensions are a part of the contribution-based social insurance system, covering employees and self-employed. The old-age pension contribution is equal to 19.52% of salary, equally split between employee and employer. To claim old-age pension, one has to reach legal retirement age (60 years for women and 65 years for men). For the minimum pension guarantee, there is a minimum insurance period equal to 20 years for women and 25 years for men. There is no general non-contributory pension scheme in Poland.<sup>18</sup> After the change of pension system in 1999, the old-age pensions are paid according to defined contribution formula and depend on lifetime contributions and life expectancy at retirement age.

The access to benefits depends on the previous social insurance record. There is no reference to nationality in the Law on social insurance system and the Law on Pensions from Social Insurance Fund. The access of migrants to pensions is an issue mainly in the case of providing benefits for those that combine work experience from more than one country (i.e. Poland and other country). Following the EU accession, these issues are covered by the coordination of social security systems. Pensions accrued in Poland and any of the EU countries can be transferred to pensioner's EU country of residence. Their periods of insurance in Member States also accumulate for the assessment of pension benefits. As for non-EU countries, old-age pensions are also covered by all bilateral social security agreements that are currently in force in Poland. This means that their benefits can be exported to their countries of residence. Polish nationals who reside in a non-EU country that is not covered by a bilateral agreement can receive their pensions on their bank account in Poland.

The share of pensions paid on the basis of international agreements in Poland is small. In 2017, 1.3% of total cash benefits paid by the Social Insurance Institution were due to the implementation of international agreements (Social Insurance Institution 2018). The number of pensions paid out as a result of these agreements were around 154,000, including around 100,000 pensions paid in Poland and almost 54,000 pensions transferred to other countries. In the latter group, almost 38,000 pensions were transferred to EU countries (of which: 17,500 to Germany, 4400 to France, 3100 to Sweden), which reflect the past migration trends from Poland.

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<sup>18</sup> Soldiers, police and other military forces as well as judges and prosecutors receive benefits from non-contributory pension schemes.

## 22.2.4 Family Benefits

There are different types of family benefits in Poland. Upon child birth, the parents are eligible to maternity, paternity and childcare benefits (financed from social insurance based on the Law on Social Insurance Cash Benefits in Cases of Sickness and Maternity) or parental benefits (tax-financed flat-rate paid to non-employed parents for first 12 months after the child birth, based on the Law of 28 November 2003 on Family Benefits).<sup>19</sup>

For those covered by social insurance, maternity benefit (*zasilek macierzyński*) is paid for 20 weeks of maternity leave (*urlop macierzyński*) (up to 6 weeks can be taken before the childbirth). The amount equals 100% of salary (80% if the mother declares taking up 52 weeks of combined maternity and childcare leave). After maternity leave, a mother or a father can claim childcare leave for 32 weeks, with the maternity benefit equal to 60% of the salary (or 80% if the maternity benefit was lowered to 80%). For fathers only, there are also two weeks of paternity benefit (*zasilek ojcowski*) that can be claimed during the first 24 months after childbirth.

Parents who are not covered by the social insurance receive the parental benefit (*zasilek rodzicielski*) that is flat rate (equal to 1000 zł/220 EUR) paid for 52 weeks after childbirth. These benefits are tax-financed.

Since 2016, families receive benefits for bringing-up children (the so-called “Family 500+ benefits”). These benefits are tax-financed, universal (except for the income-tested benefit paid for the first child) and their distribution is organised by local governments on grounds of the Law of 11 February 2016 on State support in bringing up children.<sup>20</sup> Families with lower income also can receive family benefits that are tax-financed and income tested.

The sources of financing determine the access of foreigners to benefits and their availability. Maternity, paternity and childcare leaves are paid to people who are covered by social insurance for sickness and maternity, regardless the country of nationality, provided that the parent claiming the benefit was insured in Poland. These benefits can be paid when a beneficiary remains temporarily abroad, in agreement with the Social Insurance Institution. In case of long-term stay, the benefits are subject to the coordination of social security systems (for EU countries) or bilateral agreements (for non-EU countries). Benefits cannot be exported to non-EU countries not covered by the social security agreement (they can be still received in Poland).

The tax-finance parental benefits are paid to Polish nationals and (EU and non-EU) foreigners residing in Poland, as well as refugees who have the right to work in Poland. The Laws enumerate foreign citizens eligible for tax-financed family benefits and benefits for bringing up children, on the same conditions as Polish

<sup>19</sup> Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20032282255>

<sup>20</sup> Ustawa z dnia 11 lutego 2016 r. o pomocy państwa w wychowywaniu dzieci, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160000195>

nationals. This includes EU nationals, foreigners coming from countries that have signed bilateral social security agreements binding in Poland, those holding permanent or temporary residence permits,<sup>21</sup> foreigners with a long-term EU residence permit, or those holding residence cards with the entry 'access to the labor market'.<sup>22</sup> This means that the access to tax-financed benefits to foreigners from non-EU countries is limited to selected reasons related to receiving residence permits.

Family benefits and benefits for bringing up children are granted to families if they reside in Poland while receiving the benefits, unless otherwise allowed by the coordination of social security systems. For those residing in another EU country, the coordination of social security systems means that families have a right to a supplementary allowance, i.e. difference between the benefit received in the other EU country and Poland. Thus, those living in Poland can receive a supplement up to the level of the benefit eligible in the country of origin, while Polish nationals living abroad can receive a supplement up to the level of the Polish benefit. Currently, the bilateral social security agreements signed by Poland do not cover family benefits or benefits for bringing up children. Therefore, non-EU citizens have the right to these benefits only if they reside in Poland. Similarly, Polish nationals residing in non-EU countries do not have access to the Polish family benefits in the country of residence.

### ***22.2.5 Guaranteed Minimum Resources***

There are three types of social assistance benefits in Poland that comprise the guarantee of minimum resources, paid based on the Law of 12 March 2004 on social assistance.<sup>23</sup> These are: (a) the Periodic Allowance (*zasilek okresowy*) due to long-term illness, disability, unemployment, inability to maintain or acquire entitlement to benefits from other social security systems for a period of time depending on the decision of the social assistance center; (b) the Permanent Allowance (*zasilek stałý*) granted to people with permanent disability or those who not able to work due to their age; and (c) the Special Needs Allowance (*zasilek specjalny/celowy*) granted to cover the cost of purchase of necessary goods or services.

All benefits are payable to individuals or households whose income is below the social assistance threshold. The foreigners eligible for benefits include those that are residing or staying on the territory of Poland: (a) EU/EFTA nationals and their

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<sup>21</sup> Granted to work in a profession requiring high qualifications or due to other conditions specified in Article 186 of the Law on Foreigners (*inter alia*: migrant workers, children of foreigners born in Poland, has a long-term stay permit from other EU country) or in connection with obtaining refugee status or subsidiary protection in Poland, if they live with family members in Poland.

<sup>22</sup> Excluding third-country nationals authorized to work in an EU Member State for a period not exceeding six months, those admitted for study or seasonal work, or those having the right to work based on a visa.

<sup>23</sup> *Ustawa z dnia 12 marca 2004 r. o pomocy społecznej*

family members with the right to stay or the right of permanent residence in Poland; (b) on the basis of a permanent residence permit, a long-term EU residence permit granted in Poland or in other EU country or a temporary residence permit granted due to the refugee status or subsidiary protection or in connection with obtaining in Poland the refugee status or subsidiary protection; and (c) in connection with obtaining consent in Poland for humanitarian reasons or consent for tolerated stay. These groups have the same conditions of access to benefits as Polish citizens.

Furthermore, the right to benefits in the form of crisis intervention, shelter, meal, necessary clothing and special purpose allowance is granted to foreigners staying in Poland on the basis of the certificate confirming assumption that they have been victims of human trafficking or they have temporary residence permits as victims of human trafficking. Moreover, as indicated in the introduction to this section, one of the conditions to be granted residence permits in Poland is the proof that the level of income of applicants exceeds the minimum income criteria specified for social assistance. This means that the risk of claiming social assistance benefits by foreigners is limited.

### ***22.2.6 Obstacles and Sanctions***

As discussed, the eligibility of foreigners to social protection benefits depends on the sources of their financing. In the case of social-insurance financed benefits (old-age, disability pensions, sickness benefits and maternity benefits), the access to benefits is the same for Polish nationals, EU citizens and third-country nationals covered by the respective social insurance. In the case of tax-financed benefits (family benefits, social assistance benefits) and unemployment benefits (financed from the Labour Fund), EU nationals have the right to those benefits on the same rules as Polish citizens. The access of non-EU nationals to these benefits is conditioned by holding permanent or temporary resident permits. To receive the resident permit, third-country nationals need to prove that they have an income exceeding the social assistance threshold, in order to limit the risk of claiming the benefits related to guaranteed minimum resources.

For each type of benefit, the list of eligible foreigners is formulated differently. The access to unemployment benefits is regulated in the most detailed manner, which is also related to the fact that the Law on employment promotion and labour market institutions also regulates various types of work permits for foreigners. The other acts have less detailed, but still different, specification of foreigners who can access social benefits. Thus, the set of regulations related to the availability of social security to foreign nationals in Poland is quite complex and not easy to follow, which may create difficulties in access to social security benefits.

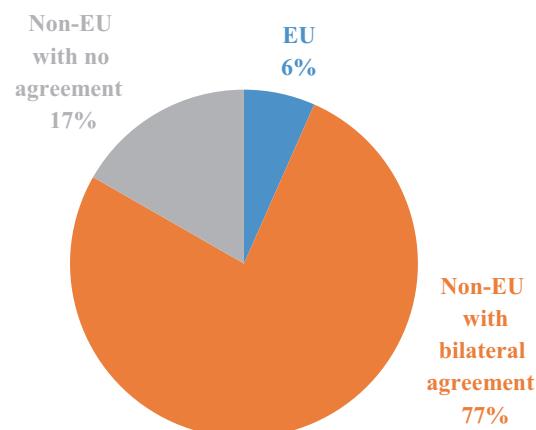
The bilateral agreements currently in force in Poland (with Yugoslavia, the Republic of North Macedonia, USA, Canada, the Republic of Korea, Australia, Ukraine, Moldova and Belarus) cover old-age, disability and survivor pensions, and sickness benefits. Family benefits are covered only in the agreements with Yugoslavia

and the Republic of North Macedonia. The bilateral agreements follow the following principles: equal treatment, applying one legislation, summing insurance periods and retaining acquired rights. Hence, they offer easier access to claiming benefits (due to summing insurance periods and applying one legislation), as well as receiving benefits (due to the retaining of acquired rights and export of benefits).

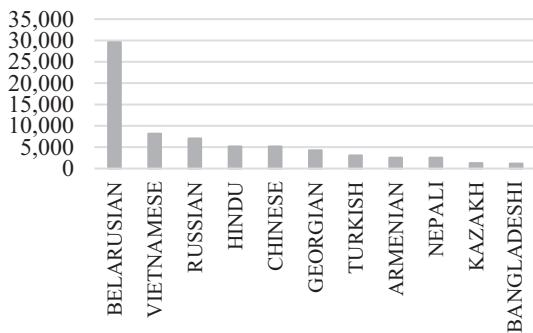
The rising inflow of migrants to Poland leads to increasing share of foreigners covered by the Polish social insurance system. Those employed on the work contract or commission contract (the so-called *umowa-zlecenie*) are covered by the mandatory social insurance. Data from the Social Insurance Institution (ZUS) indicates that between the first quarter of 2012 to the second quarter of 2018, the number of foreigners covered by the pension social insurance in Poland increased more than 6 times: from 87,500 to 541,200. This is mostly due to the increased number of Ukrainian workers, whose number of insured in mid-2018 was almost 15 times higher compared to 2012. By mid-2018, the share of foreigners among all insured people exceeded 3%, compared to around 0.6% in 2012.

Accumulation of pension rights by foreigners in Poland can lead to different outcomes with regards to their future access to benefits, depending on the country of origin and respective arrangement on social security agreements between countries. The majority of non-EU nationals working in Poland are covered by bilateral social security agreements (Fig. 22.1), with the prominent share of Ukrainian workers. However, the number of workers from countries that are not covered by such agreements is also sizeable, which concerns particularly Belarusian, Vietnamese and Russian citizens (Fig. 22.2). Signing the bilateral agreement with Belarus is an important step to cover this gap. These workers in the future might have limited access to their pension incomes at retirement, due to the lack of solutions related to portability of their pensions. In particular, if their insurance record in Poland is below 25 years (men) or 20 years (women), they will not have a right to the minimum pension. According to the Polish legislation, they would receive a benefit that is directly linked to the value of their accumulated contributions, divided by life expectancy at retirement age.

**Fig. 22.1** Insured foreigners by type of international social security arrangements.  
(Source: Own elaboration based on data of Social Insurance Institution ([www.zus.pl](http://www.zus.pl)))



**Fig. 22.2** Number of workers (by nationality) most frequently covered by social insurance from non-EU countries without bilateral agreements.  
(Source: Own elaboration based on data of Social Insurance Institution ([www.zus.pl](http://www.zus.pl)))



The data from social insurance shows that the number of insured foreigners in Poland is lower than the number of statements related to the intentions to hire foreign workers or the statements on hiring foreign workers that are reported to the labour offices. This might indicate that there is a large number of foreign workers who are working based on informal agreements, which do not give them a social protection coverage.

In December 2017, there were almost 3500 foreigners registered as unemployed, which constituted around 0.32% of all registered unemployed (MRPiPS 2018). This share is much smaller than the share of foreigners in employment, which indicates that existing policies related to the requirement to confirm the employment in order to receive the residence permit are effective. There is a slight increase in the share of unemployed registered at labour offices. In 2016, there were also around 3500 foreigners registered, constituting 0.26% of the total number of unemployed- compared to 0.24% at the end of 2015 and 0.21% in 2014, respectively. However, this rising trend is also linked to the lower number of unemployed in Poland, the drop being related to lower numbers of Polish citizens unemployed. At the end of 2017, the largest group among registered unemployed foreigners were citizens of Ukraine (around 35%), Russia (around 15%) and Belarus (around 8%). 61% of unemployed foreigners were women and 49% were long-term unemployed. Only 7% of all foreigners registered as unemployed had a right to unemployment benefit at the end of 2017. In the case of Polish citizens, the percentage was around 15%. This difference probably results from limitations in access to unemployment benefits, related to required work experience necessary to claim them.

Similar differences in access to benefits exist also in the area of family benefits. According to the data from the Ministry of Family, Labour and Social Policy, in 2017, only 0.2% of the payments of benefits for bringing up children were paid to foreign citizens.<sup>24</sup>

<sup>24</sup> <https://finanse.wp.pl/500-plus-takze-dla-dzieci-obcokrajowcow-dostaly-35-mln-zlotych-6277810971388033a>

## 22.3 Conclusions

The migration landscape in Poland has been changing, particularly in recent years. While in the past, the most important tendency was the relatively large wave of emigration, particularly after the EU accession, during the last few years, Poland has started to witness a dynamically rising share of foreign workers originating mainly from Ukraine and other non-EU countries. This means that the issue of foreigners' access to social security in Poland becomes an increasingly important topic for social policy.

The provision of social security benefits in Poland are based on insurance-financed or tax-financed rules. In the first case, the access of foreigners to benefits is similar as for Polish citizens, as it is determined by paying relevant social insurance or health insurance contributions. The access to tax-financed benefits (family benefits, social assistance, health care benefits financed from taxes) and unemployment benefits is limited to selected categories of foreigners, which is a narrower group (European Migration Network 2014).

From May 2014, the changes in eligibility rules for social security benefits (following amendments to the Act on social pension, the Act on family benefits and the Act on Employment Promotion and Labour Market Institutions) extended the category of people entitled to unemployment benefits, family benefits and social pension to foreigners holding time-bound residence permits. There are also some loopholes in the legislation. For example, the Children Ombudsman in 2017 indicated that there are problems in access to family benefits for families with children that have Polish citizenship, but parents do not (for example, the Polish parent died, and the child remains under the custody of foreign parents).<sup>25</sup>

The share of foreigners, particularly from Ukraine, participating in social insurance in Poland has increased. Most foreigners are covered by the relevant solutions in the area of coordination of social security, either based on the EU regulations or bilateral agreements. However, a sizeable share is not covered by such agreements, which may hamper their access to old-age pensions. It is also worth noting the significant share of foreign residents (mainly from Ukraine) who work in the informal economy in Poland, without access to social insurance. This can be an increasingly important issue in the coming years.

Lastly, Polish nationals residing abroad have access to benefits according to the principle of acquired rights, in the case of EU countries (coordination of social security systems) or in non-EU countries which have bilateral agreements with Poland. Non-resident nationals cannot claim new benefits if they are tax financed and when they are not covered by the Polish social insurance.

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<sup>25</sup> [http://brpd.gov.pl/sites/default/files/wyst\\_2017\\_04\\_04\\_mrpips.pdf](http://brpd.gov.pl/sites/default/files/wyst_2017_04_04_mrpips.pdf)

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# Chapter 23

## Migrants' Access to Social Protection in Portugal



Nazaré da Costa Cabral

### 23.1 Overview of the National Social Security System and Key Migration Features in Portugal

#### 23.1.1 *Main Characteristics of the National Social Security System*

The institution of a democratic regime, after the 1974 Revolution, and the enactment of the 1976 Constitution,<sup>1</sup> also meant – with respect to the characterization of the Portuguese Welfare State – the transition from a pure Bismarckian model that marked the preceding regime to a Beveridgean model, at least of a partial nature (see also the seminal work of Esping-Andersen 1990 regarding the three models (“worlds”) of Welfare Capitalism). The right to social security is currently described in the Constitution as a citizenship right (article 63), whereas the Constitutional basis for the creation of a general and universal National Health Care System (NHCS) was established by article 64.<sup>2</sup>

These two systems have a different nature in Portugal and are managed by different institutions. The Social Security system maintains, for its most important

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<sup>1</sup> Constitutional Law of April, 2, 1976, with revisions: <http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>

<sup>2</sup> The effective implementation of this NHCS took place with the approval of Law 56/1979 (*Lei n.º 56/1979, de 15 de Setembro*). The Portuguese Parliament has recently approved the new Basic Law for the NHCS (replacing the Law 48/90) It is the Law 95/2019 (*Lei n.º 95/2019 de 4 de setembro*).

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benefits, a contributory profile, and is managed by Social Security institutions (e.g. the Social Security Institute – *Instituto da Segurança Social, ISS* – and the Social Security Financial Management Institute – *Instituto de Gestão Financeira da Segurança Social*),<sup>3</sup> under the responsibility of the Minister of Labour and Social Security. In contrast, the NHCS is mostly non-contributory in nature (financed through general taxation) and managed by the Central Management of the Health Care System (*Administração Central do Sistema de Saúde – ACSS*)<sup>4</sup> under the responsibility of the Minister of Health.

As for the Social Security system, despite the maintenance of its traditional contributory profile (inherited from the previous Bismarckian regime), it has rapidly evolved to become a more comprehensive (universal) system which covers a broader range of social risks. In 1980, the non-contributory regime was created, aiming to ensure protection against certain social risks (old-age, incapacity and family expenses) in the event of the inexistence or insufficiency of a contribution period. Later on, in the 1990s, Portugal introduced a minimum income guarantee (*Rendimento Mínimo Garantido*), with the fight against poverty and social exclusion becoming an autonomous goal as one of the purposes of traditional social security.<sup>5</sup>

The first public pension reform took place in 1993. The Portuguese system, included in the so-called ‘Mediterranean model of social protection’ (Ferrera et al. 2000), had been an immature late development and asymmetric in nature, at least in comparison with central and northern European countries. Indeed, before the 1980s, the Portuguese Bismarckian-type system was incomplete, since many groups of workers (notably the considerable agrarian population and workers in some industries) were simply not included in the system’s coverage. Contributory histories therefore started to be made at a late stage and during the 1990s, they still had a rather short duration. The 1993 pension reform involved creating incentives to increase workers’ contribution periods. It also raised the retirement age for women (from 62 to 65 years of age) the same as it was for men (principle of equal treatment).<sup>6</sup> This trend continued with the 2002 and 2007 reforms that brought significant novelties to the rules regarding the calculation of pensions, notably the increase in the number of contributory years required for establishing the reference income used to determine the value of the pension.<sup>7</sup> Additionally, the so-called ‘sustainability factor’ (*fator de sustentabilidade – FS*) was also introduced in 2007, aiming to reflect in the pension amount the demographic changes occurring since the starting reference date and the (future) date of the pension request.

<sup>3</sup> ISS website: <http://www.seg-social.pt/iss-ip-instituto-da-seguranca-social-ip>; IGFSS website: <http://www.seg-social.pt/igfss-ip-instituto-de-gestao-financeira-da-seguranca-social-ip>

<sup>4</sup> <http://www.acss.min-saude.pt/>

<sup>5</sup> Law 19-A/96. Later on, the minimum income guarantee was replaced by Social Integration Income (*Rendimento Social de Inserção – RSI*), under Law 45/2005 (*Lei n.º 45/2005, de 29 de agosto*).

<sup>6</sup> Decree-Law 329/93 (Decreto-Lei n.º 329/93, de 25 de setembro).

<sup>7</sup> Decree-Law 187/2007 (Decreto-Lei n.º 187/2007, de 10 de maio).

The creation of the FS took place under the current Social Security Framework Law (Law 4/2007- *Lei n.º 4/2007, de 16 janeiro de 2007*). According to this Law, the Portuguese Social Security System – with its universal and comprehensive nature – was structured into three subsystems. The first- entitled ‘Citizenship Social Protection System’ (*Sistema de Proteção Social de Cidadania*) – includes all non-contributory benefits under residence and means-testing conditions. This first subsystem is mostly tailored to address poverty and social exclusion and it includes a broad spectrum of benefits ranging from the ‘Social Integration Income’ and ‘Social Assistance’ to social protection in old age, incapacity, family expenses and unemployment. This sub-system is financed mostly through general taxation (transfers from the general Government budget to the Social Security budget) and earmarked taxes.

The second sub-system – named ‘Contributory System’ (*Sistema Previdencial*) – is meant to address social risks (old-age, incapacity, temporary disability, unemployment, maternity, paternity and adoption, and death) in a Bismarckian fashion. It is financed through payroll contributions paid by self-employed/employed workers and employers.<sup>8</sup> This system is managed according to a ‘pay-as-you-go’ and defined benefit model.<sup>9</sup> The third sub-system, of a voluntary nature (unlike the previous ones), is the ‘Complementary system’ (*Sistema Complementar*). It includes both private and government complementary pension schemes, managed in accordance with a ‘funded’ financial model (see also Cabral and Rodrigues 2017).

### **23.1.2 Migration History and Key Policy Developments**

In the EU, Portugal is traditionally considered as a country of emigration. Portugal is – after Malta – the second EU country with most emigrants (about 2.3 million people), meaning that more than 22% of the Portuguese citizens live abroad.<sup>10</sup> Between 1955 and 1974, the main causes for emigration were economic (low income per capita, unemployment, insufficient industrialization, and overall economic fragility related to a rural economic structure), but also political (due to the repressive nature of the political regime of the ‘Estado Novo’). After 1974, a

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<sup>8</sup>The contributory regimes (for employed workers, self-employed and other regimes) are currently defined in the ‘Social Security Contributory Code’, approved by Law 110/2009 (*Código Contributivo dos Regimes da Segurança Social, Lei n.º 110/2009, de 16 de setembro*), with amendments.

<sup>9</sup>Note that the aforementioned changes that aimed to adjust the system to demographic changes, in fact changed the Portuguese system from a purely defined benefit model to a (partially) defined contribution model. Concerning the transition within pay-as-you-go systems from defined benefit models to defined contribution models, see Barr and Diamond (2010), Mendes (2011), Cabral (2014), Fall (2014) and Fall and Bloch (2014).

<sup>10</sup>Information from the latest Report of the Emigration Observatory (*'Observatório da Emigração'*), for the year 2015, and available here: <https://www.dn.pt/sociedade/interior/portugal-e-o-segundo-pais-da-europa-com-mais-emigrantes-5688739.html>

significant decrease in the number of annual citizens leaving the country occurred. Whereas before the democratic regime the major destinations of Portuguese emigrants were European countries (e.g. France, Luxembourg and Germany) and countries in the American continent (e.g. the United States, Canada, Brazil and Venezuela), after that date, there was a predominance of European countries as destinations. Moreover, accession to the European Economic Community (EEC) in 1986 favoured this shift.

Within the decolonization process that took place along with the institution of a democratic regime (from 1974 onwards), many Portuguese citizens that lived in former African colonies returned to Portugal (the so-called '*retornados*'). This involved a massive intake of new citizens (about 500 thousand) and the concomitant increase in the Portuguese population. Simultaneously, throughout the years, Portugal became a targeted destination for new immigrants – citizens from those same former Portuguese colonies (e.g. Angola, Mozambique, Cape Verde, and Guinea-Bissau). This process further intensified in the aftermath of the accession of Portugal to the EEC. In fact, Portugal has since then received significant amounts of structural Funds that were primarily allocated to construction and infrastructure. Work force needs increased the demand for more immigrants that at that time came mostly from Cape Verde (Baganha et al. 2009). Furthermore, following the collapse of the Eastern bloc in Europe and the subsequent enlargement of the European Community (or European Union), Portugal increasingly became a host country for Eastern migrants (in the case of EU members, mostly from Romania; in the case of non-EU members, from Ukraine, Russia and Moldavia). Simultaneously, Portugal became a destination country also for Asian migrants originating mainly from China. Since the 2000s, a significant increase of Brazilian migrants occurred, and they have become the largest number of foreign citizens currently living in Portugal. Last but not least, in these first decades of the twenty-first century, Portugal has also become an increasing destination for many EU citizens, notably from the UK, Spain, France and Italy, with these two latter countries undergoing a significant rise in the last couple of years (SEF 2017).<sup>11</sup>

The recent financial and economic crisis has had a significant impact on migration movements in Portugal, affecting both emigration (with a significant increase) and immigration (with a decrease). The migration balance was negative (net emigration) between 2010 and 2016, this changing to a positive balance in 2017 (net migration).<sup>12</sup> Figure 23.1 captures this evolution in recent years by juxtaposing the number of (new) permanent emigrants and (new) permanent immigrants.

<sup>11</sup> So, the tenth main resident communities in Portugal are, according to data from SEF (2017): Brazil (85426), Cape Verde (34986), Ukraine (32453), Romania (30750), China (23197), UK (22431), Angola (16856), France (15319), Guinea-Bissau (15198) and Italy (12925).

<sup>12</sup> Information from the Migration Observatory ('*Observatório das Migrações*'). Statistical Reports available here: <https://www.om.acm.gov.pt/publicacoes-om/colecao-imigracao-em-numeros/relatorios-anuais>

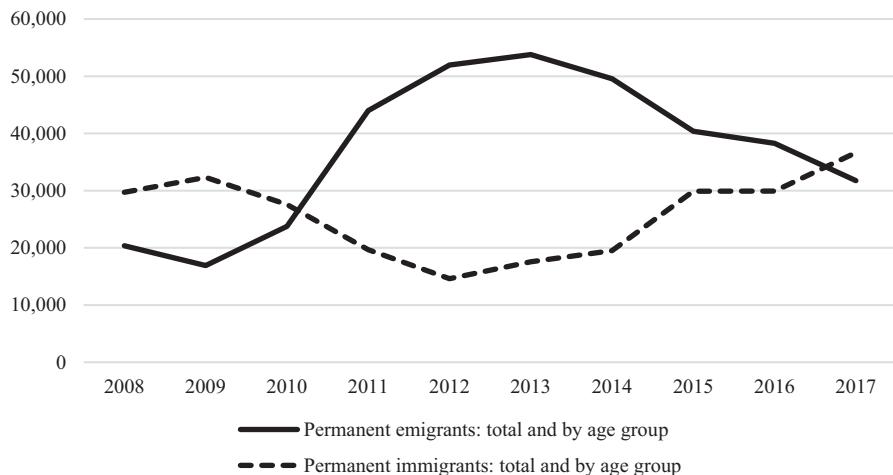


Fig. 23.1 New permanent emigrants and immigrants in Portugal. (Source: INE, PORDATA)

## 23.2 Migration and Social Protection in Portugal

Considering the applicability of the European rules on social security coordination deriving from the Treaty on the Functioning of the European Union (TFEU), the EU Charter of Fundamental Rights (CFR) and Regulation (EC) 883/2004 and its Implementing Regulation (EC) 987/2009, Portugal has managed – with respect to non-national EU citizens living and working in the country – to achieve abolition of discrimination on grounds of nationality (principle of equal treatment) in relation to employment, remuneration and other working conditions, and the adoption of measures in the field of social security in order to ensure this. Portugal has been involved in the on-going revision process of Regulation (EC) 883/2004 and some areas were given special attention: (i) treatment of economically inactive persons moving from one Member State to another – the vicious circle between ‘working and activating conditions to obtain residence and the residence condition to access social protection’; (ii) the qualification of long-term care as sickness benefits, as family benefits (due to family dependence) or possibly as a new social risk; (iii) cross-border health care provision and expenses reimbursement (see, on this issue, Giubonni et al. 2017).

As for citizens from non-EU countries, it is necessary to distinguish between the treatment given to migrants from countries with which Portugal has signed bilateral/multilateral Social Security Agreements<sup>13</sup> and those with which those Agreements have not been signed. For the latter, with respect to contributory benefits, non-EU

<sup>13</sup> Portugal has signed such agreements with 18 countries, including Andorra, Argentina, Australia, Bolivia, Brazil, Cape Verde, Canada, Canada-Québec, Chile, Ecuador, El Salvador, United States of America (U.S.), the Islands of Jersey, Guernsey, Herm, Jethou and Man, Mozambique, Moldavia, Paraguay, Tunisia, Ukraine, Uruguay and Venezuela. In 1978, Portugal also signed the (multilateral) Ibero-American Convention on Social Security.

foreigners are treated as Portuguese citizens if they are working and insured in the Portuguese social security system. Nevertheless, they cannot make use of social security coordination principles – notably the principle of aggregation of periods and the principle of exporting benefits – whenever they come to Portugal with a past contributory record in the country of origin. On the contrary, the former can make use of these principles – at least for some benefits. Also, the material scope of the Social Security Bilateral Agreements signed by Portugal with other countries has increased over time. The former Agreements mostly included old-age and invalidity (e.g. the Agreements signed with the United States and Canada in the 1980s),<sup>14</sup> whereas in the more recent Agreements signed with some of the non-EU countries from which more migrants enter Portugal (e.g. Mozambique, Cape Verde and Ukraine), the majority of social risks are included. Moreover, in these cases, principles of reciprocity, equal treatment, aggregation of contributory periods (for all kinds of benefits) apply. Family members are included in the scope of protection and there are also specific rules to prevent overlapping. In the case of Mozambique and Cape Verde, some non-contributory benefits are also included in the scope of the coordination rules (e.g. old-age and invalidity social pensions) and this represents a major improvement in the traditional conception of social security coordination rules that in the past were meant mostly for Bismarkian-type social benefits (that is, involving the idea of insured workers).

### 23.2.1 *Unemployment*

Unemployment benefit (*subsídio de desemprego*) is a contributory benefit financed through payroll contributions paid by workers and employers. To claim this benefit, workers must satisfy the basic conditions either with respect to a past contribution period (a minimum qualifying period of 360 days of paid employment with registered earnings in the 24 calendar months immediately prior to the date of unemployment) or to the fulfilment of obligations vis-à-vis the employment centre (*centro de emprego*) while unemployed (e.g. searching for and/or acceptance of suitable work) (European Commission 2017, p. 51).

The duration and amount of unemployment benefits vary according to the beneficiary's age and contributory record. Notwithstanding this, unemployment benefits may be paid as a lump sum if the beneficiary presents a project proposal to the employment centre for creating his/her own employment. Workers may also claim 'partial unemployment benefits' (cash benefit paid to workers who claimed or were

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<sup>14</sup>With respect to old-age and invalidity pensions, Portuguese internal legislation (Decree-Law 187/2007) also ensures coordination mechanisms, notably through the applicability of the principle of the aggregation of periods.

receiving unemployment benefits, and who subsequently resume employment on a part-time contract or who start self-employed work).<sup>15</sup>

In contrast, the 'social' unemployment benefit (*subsídio social de desemprego*) is a universal-type benefit financed through general taxation. This benefit is granted to unemployed people who possess a contributory record (although insufficient to obtain the normal unemployment benefit) and fulfil residence and means-tested conditions. Hence, this cash benefits aims to compensate unemployed for lack of income due to involuntary unemployment if they do not meet the conditions for unemployment benefits (initial social unemployment benefits) or after these unemployment benefits came to an end (subsequent social unemployment benefits). The duration and amount of the social unemployment benefits vary according to the beneficiary's age and contributory record.<sup>16</sup>

In 2012, an allowance for cessation of work for self-employed workers (*subsídio por cessação de atividade*) was created. This allowance is of a contributory nature and financed through contributions from self-employed workers and from the respective contracting company. The duration and amount of the allowance also vary according to the beneficiary's age and contributory record.<sup>17</sup>

Foreigners (EU and non-EU) need to comply with the same eligibility requirements as national residents, both with respect to unemployment benefit and 'social' unemployment benefit. Foreigners must have legal residence in Portugal, or permit, allowing them to celebrate an employment contract. For all these unemployment benefits, residence conditions remain highly active. This means that claimants must keep some contact through residence with the Portuguese system, at the least because they have to satisfy 'integration' conditions vis-à-vis the employment centre. For this reason, when beneficiaries (either Portuguese nationals or foreigners) leave Portugal, the benefit is suspended for three months, a period after which – if they do not return – it ceases to be paid. Ultimately, the export of unemployment benefits (as admitted in the European Regulations) can be impaired by this residence-type obligation regarding the State of origin.

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<sup>15</sup>The basic legislation for unemployment benefit is Decree-Law 220/2006 (*Decreto-Lei n.º 220/2006, de 3 de Novembro*), with amendments.

<sup>16</sup>The basic legislation for social unemployment benefit is Decree-Law 220/2006 (*Decreto-Lei n.º 220/2006, de 3 de Novembro*), with amendments. See also Decree Law 70/2010 (*Decreto-Lei n.º 70/2010, de 16 de junho*) – rules on the determination of incomes and household composition.

<sup>17</sup>The basic legislation for Allowances for Cessation of Work for Self-Employed Workers is Decree Law 35/2012 (*Decreto-Lei n.º 35/2012, de 15 de março*), Law 20/2012 (*Lei n.º 20/2012, de 14 de maio*), with amendments including those from Decree-Law 2/2018 (*Decreto-Lei n.º 2/2018, de 9 de janeiro*).

### 23.2.2 *Health Care*

The Portuguese Constitution enacted in 1976 defines the right to health as a universal social right and states that this is achieved through the creation of a universal, general and free National Health Care System – NHCS (for all citizens or alike), regardless of their economic, professional or statutory situation. The system was therefore to be financed through general taxation. The implementation of the NHCS (SNS – *Serviço Nacional de Saúde*) was carried out by Law 56/1979 (*Lei n.º 56/1979, de 15 de setembro*). The NHCS has its own legal status and includes all official institutions and services that provide health care under the Ministry of Health. The national network of healthcare covers SNS facilities, private institutions and independent professionals with whom contracts have been signed. The NHCS is characterized by providing universal coverage and global health care in an integrated way or else guaranteeing its provision. It is usually being free to its users, taking into account the social and financial position of citizens; and it guarantees equal access to its users.

While health care benefits in kind are provided by the NHCS on a universal basis, sickness cash benefits (*subsídio de doença*) – for temporary disability/incapacity – are paid by the social security system and are of a contributory nature. The overall conditions access sickness benefit, applicable both to nationals and foreigners legally resident, are: (i) beneficiaries must be gainfully employed for a total of six calendar months, whether consecutive or aggregate, prior to the date that the sickness started; (ii) beneficiaries must have registered earnings for at least twelve days of work in the four months immediately before the month preceding the onset of incapacity (professionalism index, *índice de profissionalidade*) – this condition does not apply to self-employed workers or to seafarers covered by the voluntary social security scheme; (iii) self-employed workers and persons covered by the voluntary social security scheme must have paid their social security contributions for the quarter preceding the onset of incapacity.<sup>18</sup>

Sickness benefits are due either to nationals or foreigners as long as these legal conditions are met. Benefits are paid up to 1095 days and the replacement rate depends on the duration of the disability (between a rate of 55% to a duration up to 30 days and 75% for a duration higher than 365 days). Individuals in principle should not leave the country, since they are disabled (unless for medical treatment abroad also certified).

Unlike sickness benefits that are temporary in nature, invalidity pensions (*pensão de invalidez*) are awarded to individuals in the event of permanent incapacity for work for a reason not related to their occupation, as certified by the Incapacity Verification System (*Sistema de Verificação de Incapacidades*).<sup>19</sup> According to the degree of incapacity, invalidity may be relative (when the beneficiaries' earning

<sup>18</sup> See Decree-Law 28/2004 (*Decreto-Lei n.º 28/2004, de 4 de fevereiro*) (with amendments).

<sup>19</sup> See Decree-Law 187/2007 (*Decreto-Lei n.º 187/2007, de 10 de maio*), with changes – social protection in old age and legal invalidity framework.

capacity for their own occupation is reduced, they are not expected to recover within the next three years, and have registered earnings for at least five calendar years) or absolute (when the beneficiary is permanently and definitively incapable of working in any occupation and has registered earnings for at least three calendar years).<sup>20</sup> Furthermore, invalidity pensions can be either of a contributory nature, depending on the contributory history and the level of earnings,<sup>21</sup> or of a non-contributory nature ('social' invalidity pensions), which in turn are dependent on residence and are means-tested.

Although the NHCS is a universal system, financed through general taxation and therefore dependent on the residence condition (only residents in Portugal should be entitled), in some cases – notably under Regulation (EC) 883/2004 and the (new) Cross Border Health Care Directive (Directive 2011/24/EU) – access to health care provision (benefits in kind) can be 'opened' to residents abroad (either foreigners or even national citizens) either in the case of temporary stay or permanent stay in Portuguese territory – and both for unplanned or scheduled treatment in the Portuguese NHCS. One can thus say that in these particular cases (within the EU), the residence condition (set as the primary condition in the Portuguese NHCS) is outweighed by a labour insurance-type link with a (different EU) social security system (which is, by its nature, a non-universal, non-residence-based link).

In the case of sickness benefits, the movement of workers/citizens across different (EU or non-EU) countries determines the applicability of typical coordination rules on social security – respectively enshrined in EC Regulations or in Bilateral Agreements – and therefore, in specific cases, allowing for the export of benefits. Finally, with respect to invalidity pensions of a contributory nature, coordination mechanisms (e.g. aggregation of periods and benefit export) are firstly recognized in Portuguese internal law (Decree-Law 187/2007), notably through the applicability of the principle of the aggregation of periods, provided an international instrument of coordination involving the Portuguese State has been signed. On the contrary, social invalidity benefits are based on residence and for this reason export of benefits is prevented.

### 23.2.3 *Pensions*

In the Portuguese system, there are two types of benefits related to old-age. Firstly, there is the old-age contributory pension (*pensão de velhice*) financed by employers, employees, or self-employers in a pay-as-you-go regime. To claim this pension,

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<sup>20</sup>Absolute invalidity is considered as an incapacity of 100% for any type of work and relative invalidity the incapacity to obtain at least 50% of the earnings obtained in the previous profession.

<sup>21</sup>For this reason, nationals residing abroad can still access this pension under the same conditions as Portuguese nationals residing in Portugal.

individuals must prove a minimum period of contributions of 15 years<sup>22</sup> and have legal age to require the old age pension (for 2019, 66 years and 5 months old). The pension amount is determined according to the beneficiary's social security contribution record and registered earnings. The pension is a percentage of the income referenced (with the rules laid down in 2007, it corresponds to the average of earnings registered over the contributory period – and a full contributory period is of at least 40 years) multiplied by an annual accrual rate of between 2% and 2.3%, multiplied by the years of contribution.

Early retirement is possible in three situations: (i) specific early retirement regimes for exacting professions (e.g. miners, air traffic controllers and pilots, dock-workers, etc.); (ii) long-term unemployment (and under age conditions); (iii) the age retirement flexibility regime. In this latter case, early retirement is only possible under strict conditions – e.g. long periods of insurance and a minimum age for retirement, never less than 60 years of age – and implies a reduction in the amount of the pension.

Foreigners (legally residing in Portugal) and nationals residing abroad have the right to access the old-age contributory pension as long as legal conditions (*supra*) are met.

Secondly, there is also a 'social' old-age pension (*pensão social de velhice*) of a non-contributory nature which is granted under the following conditions: (i) being legally resident in Portugal (as long as EU foreigners or coming from countries with BSSA in place); (ii) income lower than a given threshold (for 2018, 428.90€); (iii) legal age to request the social pension (the same as for the old-age pension – *supra*); (iv) not benefiting from any other kind of pension and if so, the respective amount should be inferior to the value of the social pension.<sup>23</sup>

An additional remark should be added to the applicability of internal rules on old-age protection in the case of migrant citizens. As in the case of contributory invalidity pensions, coordination mechanisms (e.g. aggregation of periods and benefit export) are firstly recognized in Portuguese internal law (Decree-Law 187/2007), notably with the applicability of the principle of the aggregation of periods, provided an international coordination instrument involving the Portuguese State has been signed.<sup>24</sup> On the contrary, social old-age pensions are based on the residence condition and for this reason export of benefits is prevented.

Finally, there are certain supplements of a non-contributory nature that may be paid on top of the old-age pension. These are the Dependency Supplement (*Complemento de Dependência*) paid to pensioners in a state of dependency, and the

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<sup>22</sup>See Decree-Law 187/2007 (*Decreto-Lei n.º 187/2007, de 10 de maio*), with changes – social protection in old age and legal invalidity framework.

<sup>23</sup>Decree-Law 160/80 (Decreto-lei n.º 160/80, de 27 de maio) and Decree-Law 46/80 (Decreto-lei n.º 464/80, de 13 de outubro).

<sup>24</sup>Pension exportability is allowed either by international rules (article 7 of Regulation EC 883/04 in the case of EU residents, or some Bilateral Agreements signed), and first and foremost by the internal Portuguese legislation (article 76/3 of the Decree-Law 187/2007) setting that the pension request – in the case of residents abroad – can be presented in the social security service or website.

Solidarity Supplement for the Elderly (*Complemento Solidário para Idosos – CSI*), paid to pensioners with limited means who have reached or passed the normal state pension age under the general social security scheme and who are resident in Portugal.<sup>25</sup>

### 23.2.4 Family Benefits

With respect to maternity/paternity, a significant innovation was introduced by the 2009 Labour Code: the current regime no longer distinguishes, as it did in the past, between maternity and paternity leaves, but uses common expressions of 'parental leaves' that can be shared, within certain conditions, between mothers and fathers. The idea of equal treatment between women and men was therefore reinforced in the Portuguese regime.

Parental leaves include maternity, paternity and adoption<sup>26</sup> and they can be of two types: (i) initial parental leaves (to be used immediately before or after birth/adoption) that can be shared between parents<sup>27</sup>; (ii) subsequent parental leaves (to be used in a subsequent period of the child's life). The latter, for example, includes an extended parental leave (three more months added to the initial period, and this can be taken by one or both parents, but never at the same time) and a leave for childcare. Furthermore, the social security system also pays subsidies for motherhood specific risks such as benefits for clinical risk during pregnancy, for termination of pregnancy and for special risk.

Parental leaves are of a contributory nature, being financed by payroll contributions paid by workers and employers, if applicable. Foreign citizens are entitled to all these benefits in the same conditions as nationals and citizens residing abroad can also claim these benefits as long as contributory conditions are fulfilled. Moreover, some specific and limited benefits, entitled 'social parental benefits' can be granted to nationals or foreigners without a (sufficient) contributory history – in this case being residence-based and means-tested benefits. In either cases, entitlement conditions are related to the mother and the father, not the child: notably, there

<sup>25</sup> Decree-Law 232/2005 with amendments (Decreto-lei n.º 232/2005, de 29 de dezembro).

<sup>26</sup> See Law 7/2009 (*Lei n.º 7/2009, de 12 de fevereiro*), with amendments – 'Labour Code'; Decree-Law 91/2009 (*Decreto-Lei n.º 91/2009, de 9 de abril*) - parental benefits.

<sup>27</sup> Granted for a period of up to 120 or 150 consecutive days (paid at 100% of the reference income in the former case, at 80% in the latter), according to the parents' choice, without prejudice to the rights of the mother (*infra*). Both parents may take this period at the same time. If the baby is stillborn, then the entitlement is only 120 days. The benefit is extended by 30 consecutive days per child, in the case of multiple live births. The 120 days or 150 days may be extended for shared leave. Each parent is exclusively entitled to specific days of leave: (a) mothers are exclusively entitled to take parental leave of up to 30 days before the birth, but must take 6 consecutive weeks of leave following the birth; (b) fathers are required to take ten working days of parental leave, five of which must be consecutive, within the 30 days immediately following the birth. The remaining days may be taken in a single stretch or at intervals.

are no specific requirements regarding the country of residence or nationality of the child.

As for family benefits, since the enactment of the Social Security Framework Law of 2007, these benefits are basically financed by budget transfers and taxes. Family benefits are considered ‘universal-type’, non-contributory social benefits relying on residence and means-testing conditions. The basic condition for accessing child benefit is that children should reside in Portugal. It should be noted that in Portugal, children, not parents, are the direct beneficiaries of these family benefits.<sup>28</sup> For children, residence in Portugal is therefore required, but the respective parents can live and/or work abroad. The main eligibility conditions thus include: (i) being legally resident in Portugal; (ii) not working; (iii) family reference income is equal to or less than the fourth income bracket amount<sup>29</sup>; (iv) the total value of the entire household’s movable assets is less than €101,116.80. Children aged up to 16 years old are hence entitled to receive the benefit as long as they fulfil the previous conditions (after the age of 16, family benefits are also granted depending on age and education level).

Non-national children are also entitled to these benefits as long as they reside in Portugal, even if this is not the case with respective parents and regardless nationality.

### 23.2.5 *Guaranteed Minimum Resources*

The guaranteed minimum resources, in Portugal known as Social Integration Income (*Rendimento Social de Inserção*, RSI) is mostly meant to address poverty and social exclusion amongst residents in Portugal. The RSI is a cash means-tested benefit (considering household incomes and real estate) established to help beneficiaries with their basic needs, but also a measure aiming at fostering their integration professionally and within society. Therefore, beneficiaries must be actively engaged in job search or accept other activating measures (e.g. training).<sup>30</sup> Being based on residence, this benefit cannot be exported to other countries.

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<sup>28</sup> See Decree-Law 176/2003, of 2nd of August 2003 (*Decreto-Lei n.º 176/2003, de 8 de agosto*) with several changes.

<sup>29</sup> The reference income is calculated by taking the total earnings of the household and dividing this by the number of children in the same household, plus one. However, the benefit is only given to children who meet the eligibility conditions and providing that the household income does not exceed the fourth income bracket ceiling. Reference income brackets (for 2018): 1st Bracket:  $0.5 \times \text{IAS}^* \times 14 =$  Up to €3002.3 (inclusive); 2nd Bracket: More than  $0.5 \times \text{IAS} \times 14$  to  $1 \times \text{IAS} \times 14 =$  More than €3002.3 to €6004.6 (inclusive); 3rd Bracket: More than  $1 \times \text{IAS} \times 14$  to  $1.5 \times \text{IAS} \times 14 =$  More than €6004.6 to €9006.9 (inclusive); 4th Bracket: More than  $1.5 \times \text{IAS} \times 14$  to  $2.5 \times \text{IAS} \times 14 =$  More than €9006.9 to €15011.5 (inclusive); 5th Bracket: More than  $2.5 \times \text{IAS} \times 14 =$  More than €15011.5. \*€428.90 for 2018.

<sup>30</sup> Law 13/2003 (*Lei n.º 13/2003, de 21 de maio*), with amendments – establishing Social Integration Income, and Decree-Law 1/2016 (*Decreto-Lei n.º 1/2016, de 6 de janeiro*).

The eligibility conditions for accessing the RSI have been progressively restricted during the Euro crisis (between 2009 and 2015), as was noted in the European Commission (2015, p. 7) study. Problems of adequacy, effectiveness and 'non-take-up' arose during this dramatic period (which ultimately added to the increase of poverty rates in Portugal). In this study, the Portuguese regime was included in the category of "simple and non-categorical schemes but with rather restricted eligibility and coverage" (European Commission 2015, p. 7), and the main conclusion was that amongst EU countries, Portugal was one of the seven where benefit coverage had deteriorated since 2009 (*Idem*, p. 8).

The eligibility conditions are (still) very restrictive: (i) the household must not have movable assets or goods subject to registration worth more than €25,279.20; (ii) the claimant must be a legal resident of Portugal; (iii) the claimant must face serious financial need; (iv) sign and comply with the Integration Contract (*Contrato de Inserção*); (v) be over 18 years of age, with few exceptions; (vi) be registered with the employment centre (*centro de emprego*) in his/her area (if unemployed and capable of working); (vii) not be detained in prison; (viii) not have been placed in any institutions financed by the State. These conditions apply to EU foreign citizens alike. As for non-EU foreign citizens (from a country with no agreement of free movement with EU), residence condition is more demanding, because he/she must have lived in Portugal for at least one year.

### 23.3 Conclusions

Social benefits in Portugal are not, in principle, conditional on nationality: a foreign citizen is granted treatment identical to that of a Portuguese national as long as the specific conditions are met (basically, a contribution record for contributory benefits and residence and means-testing conditions for non-contributory benefits).<sup>31</sup> This is a consequence of a national treatment principle (prohibition of discrimination) that is of general application. Moreover, due to the same principle, Portugal has not implemented any kind of specific social benefits scheme only for foreigners or for citizens residing abroad.

In turn, for most benefits (either contributory or not), the condition of a minimum period of residence is not imposed by the Portuguese legislation. The only exception concerns the Social Integration Income, for which a minimum period of one year of residence is required. Moreover, claiming and receiving social benefits should not affect – at least in legal terms – the access of foreigners to the Portuguese citizenship (naturalization process), their residence permits, or their right to family reunification. In practical terms, though, and since the residence visa (*visto de residência*) is mostly granted to foreigners (notably those coming from non-EU countries) that

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<sup>31</sup> Some exceptions can be nevertheless highlighted, as the aforementioned case with old-age 'social' pension, in which non-EU foreign citizens experience restrictions.

enter the country to work, and with an employment contract, the lack of this contract may delay or making the granting of the visa more difficult.

In general, when assessing the applicability of coordination rules and international mechanisms to the framing of migration issues, and in particular the applicability of the residence criterion, the following patterns can be observed with regard to the Portuguese menu of social benefits.

Firstly, the minimum guarantee of resources (*Rendimento Social de Inserção*) is only granted to citizens with (legal) residence in Portugal – including the case of Portuguese citizens – therefore, the residence condition is very strong in this case. The same happens typically with other non-contributory benefits, such as social pensions and family benefits (the beneficiaries of which are the children).

Secondly, regarding health care benefits (in kind), although the NHCS is a universal system financed through general taxation and therefore dependent on the residence condition (only residents in Portugal should be entitled), in some cases – notably under Regulation (EC) 883/2004 and the (new) Cross Border Health Care Directive (Directive 2011/24/EU) – access to health care provision can be ‘opened’ to citizens insured abroad (foreigners and national citizens). It is thus possible to state that in these particular cases (within the EU), the residence condition (set as the primary condition in the Portuguese NHCS) is outweighed by a labour insurance-type link with a (different EU) social security system (which is, by its nature, a non-universal, non-residence-based link).

Thirdly, regarding contributory social benefits, two extremely different outcomes occur, both resulting from the Portuguese internal law. The first one concerns the case of parental allowances including both maternity and paternity in the Portuguese system. In this case, the residence condition is weak and almost irrelevant, meaning that parental benefits can be claimed even by those beneficiaries (Portuguese nationals or foreign citizens) that no longer live in Portugal, as long as the six month request period (after the date of birth) is fulfilled (which is the same as for residents in Portugal) and regardless of the place of birth of the child. The second scenario is in the field of unemployment benefits. Despite the contributory nature of these benefits, the residence conditions remain highly active, meaning that claimants must keep some contact with the Portuguese system through residence, not the least because they have to fulfil activating conditions vis-à-vis the employment centre (e.g. searching for and/or acceptance of suitable work). For this very reason, when beneficiaries leave the national territory, the benefit is suspended for three months, a period after which – if they do not return – it ceases to be paid. Ultimately, the export of unemployment benefits (as allowed for in the European Regulations) can be impaired by this residence-type obligation towards the State of origin.

Finally, between these two extreme opposite outcomes, the Portuguese regime with respect to contributory benefits may be closer, in certain cases, to the former solution (weak residence condition) – which is the case with old-age and invalidity pensions, whereas in other cases the solution is closer to the latter (strong residence condition) – which is the case with sickness benefits.

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# Chapter 24

## Migrants' Access to Social Protection in Romania



Irina Burlacu, Sorina Soare, and Daniela Vintila

### 24.1 Introduction

This chapter aims to provide a general overview of the main features of the social security system in Romania and the nexus with the main migration patterns. It illustrates how social benefits have been transposed in the national legislation to cover different groups of individuals living in, moving to or moving out of Romania. In doing so, the chapter pays particular attention to the eligibility conditions for these different groups in order to identify potential differences in terms of access to social benefits between resident nationals, non-resident nationals, and non-national residents. The chapter is divided in three parts. The first part discusses the main developments in the field of social policy and migration in Romania. It starts from the early 1990s' logic of adaptation to internal pressures aiming to prevent large-scale protests (Vanhuyse 2009; Pop 2013) and continues with the development of the national welfare system during the 2000s. We then examine the features of the legal framework regulating access to social benefits and services across five policy areas: unemployment, health care, pensions, family benefits and guaranteed minimum resources. Finally, we draw some analytical conclusions arguing that the post-crisis renewal of the legal framework induced a redirection of core principles towards a

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more liberal perspective. However, despite regular amendments, Romanian policy-makers still tend to focus more on ensuring the social protection of the general category of residents, regardless of their nationality.

## 24.2 Overview of the Welfare System and Main Migration Features in Romania

Over the last decade, Romania has become one of the fastest-growing economies in the world (Vasilescu 2018), while also being one of the European Union (EU) Member States with the lowest levels of Gross Domestic Product (GDP) per capita.<sup>1</sup> Despite constant improvement in terms of macroeconomic indicators and social policy reforms, there have been limited changes with regards to social inequality (i.e. maintained poverty risk especially for residents of rural areas, Roma, and disabled people – see Schraad-Tischler et al. 2018). Social security spending remained limited (Vintila and Lafleur [in this volume](#)) and in certain areas such as health care, Romania has the lowest expenditure per capita at the European level.<sup>2</sup> Furthermore, the country counts with a large rural population (46% of the total population in 2015<sup>3</sup>); and important rural-urban disparities in terms of development and poverty can still be observed. Rural areas have also experienced a high concentration of in-work poverty, particularly among those working in the subsistence agriculture (Vasilescu 2018). While the regions of Bucharest Ilfov, North-West, Centre and West are the most dynamic areas in terms of economy with a younger population, the Southern part of Romania is still characterised by lower levels of socio-economic development and increasingly ageing demographical structures.<sup>4</sup> Employment growth remains extremely unbalanced, with significant regional disparities and low employment rates for young people, women, individuals with low educational levels, especially those originating from rural areas (Vasilescu 2018).

The demographic decline adds further complexity to this issue by challenging the coverage, efficiency and limits of the Romanian welfare system. Since the early 1990s, Romania was included in the group of countries with the steepest decline in population, together with Lithuania, Ukraine, Bulgaria, and Hungary (Schubert et al. 2016). Additionally, sizeable migration outflows openly challenged the sustainability of the Romanian welfare system, in particular with regard to the pension

<sup>1</sup> Eurostat (2019). *Real GDP per capita [SDG\_08\_10]*, <http://ec.europa.eu/eurostat/data/database>. Accessed 19 March 2020.

<sup>2</sup> OECD (2017). *Romania Country Health Profile 2017*. <https://doi.org/10.1787/9789264283534-en>. Accessed 19 March 2020.

<sup>3</sup> National Institute of Statistics (2017). *Repere economice și sociale regionale: Statistică teritorială*, [http://www.insse.ro/cms/files/Publicatii\\_2017/82.Repere\\_economice\\_si\\_sociale\\_regionale\\_Statistica\\_teritoriala\\_2017.pdf](http://www.insse.ro/cms/files/Publicatii_2017/82.Repere_economice_si_sociale_regionale_Statistica_teritoriala/Repere_economice_si_sociale_regionale_Statistica_teritoriala_2017.pdf). Accessed 19 March 2020.

<sup>4</sup> National Institute of Statistics (2017). See footnote 3.

system (Popescu et al. 2016). The increased stocks of emigrants mostly include active and qualified people, a major challenge for the domestic labour supply and a growing social problem (i.e. the negative by-effects on children left behind or the difficult socio-psychological and economic reintegration of returnees).

### **24.2.1 Main Characteristics of the National Social Security System**

Communist Romania had a social protection system based on pensions, health care and sickness insurance provided on universal basis (Pop 2013). The system provided limited resources for non-state employees and did not acknowledge unemployment. Given the emphasis on family and female active occupational status, child allowances were also provided. This system was rapidly put under severe pressures by the negative economic consequences emerged during the transition period, among which the diffused risks of unemployment and marginalisation. Post-communist social policy reforms were implemented slowly and produced scattered regulations (Sotiropoulos and Pop 2007). During the early 1990s, adjustments were rather *ad hoc* sectoral responses aiming to consolidate democracy, while also preventing the protests of specific professional categories such as miners (Sotiropoulos and Pop 2007; Cerami and Stanescu 2009; Vanhuyse 2006, 2009). In this context, political parties rapidly imposed themselves as the main managers of social policy-making, with limited involvement from welfare-focused societal actors such as workers, trade unions or Non-Governmental Organizations (NGOs) (Sotiropoulos and Pop 2007; Pop 2013). This was further facilitated by the diffusion of governing via governmental ordinances, bypassing both Parliament and public debates. The result was that the post-communist social agenda was co-drafted by parties and a wide range of international actors (the World Bank, the International Monetary Fund, the EU or the International Labour Organization) (Sotiropoulos and Pop 2007; Popescu et al. 2016).

Given the drastic reduction of the productive capacity of the national economy and the limited financial resources available, Romanian policy-makers introduced embryonic social safety nets (i.e. unemployment insurance (1991) and social assistance (1995)), coupled with the expansion of early retirement incentives (Cerami and Stanescu 2009). This reform was meant to control the risk of poverty explosion due to the privatization process (Pop 2013). At the end of the 1990s, the imperative of structural adjustments to the market economy induced a complex welfare state restructuring that targeted, almost simultaneously, the health care system, family-related policies, pensions, unemployment, the fiscal decentralization of locally delivered social benefits and the guaranteed minimum income (Sotiropoulos and Pop 2007; Pop 2013). Many of these reforms were inspired by Western European welfare systems, but their results remained rather poor (Popescu et al. 2016). The infrastructure for their implementation at the central and local level in Romania

remained under-financed, with inadequate human and logistic resources. Not surprisingly, these reforms did not suffice to limit a pervasive poverty and social exclusion (Rat 2009). Strong political and social cleavages between rural and urban areas resulted in policy blockages at the local level and inconsistent legislation (Sotiropoulos and Pop 2007; Cerami and Stanescu 2009). Meanwhile, in response to increased emigration and demographic challenges, different policies were implemented with the explicit aim of preventing increased brain drain or countering demographic decline.<sup>5</sup>

After the uptrend of economic development, Romania registered a negative growth rate in 2010. The implementation of an austerity package brought important cuts in terms of social benefits and, more generally, a neoliberal turn in Romanian labour and health policies (Stoiciu 2012). In this context, the 2011 reform of the social security system was openly designed to diminish the welfare state and to encourage work by reducing welfare payments (Stoiciu 2012). The level of unemployment benefits has abruptly decreased since then (i.e. in August 2017, only 18.9% of all unemployed were registered with the public employment service as recipients of unemployment benefits<sup>6</sup>).

Currently, the Romanian welfare system is based on contributory benefits (old-age pensions, unemployment benefits, health insurance, maternity leave and allowance, parental benefits, among others) and non-contributory benefits (state allowance for children and families, emergency benefits and financial aid, disability allowance, guaranteed minimum income or the guaranteed social pension). According to the legislative reform implemented in January 2018,<sup>7</sup> the social charges payable by employers become the liability of employees, as follows: 25% for social insurance contributions, 10% for health insurance contributions and 2.25% on work insurance. Romania has a flat-tax rate of 10% and its fiscal policy has been criticized for not being equally favourable for all social groups.<sup>8</sup> Since 2007, the country has introduced the pillar model endorsed by the World Bank and experimented by other post-communist countries (Cerami and Vanhuyssen 2009; Popescu et al. 2016).

Despite the fact that Romania follows the general Central and Eastern European trend in terms of GDP evolution, social indicators, and adjustment of the national context to the *acquis communautaire*, the risk of destabilizing factors is still very high, thus leading to a rather “hybrid” form of welfare state not entirely sustained by real economic progress (Schipor and Frecea 2018).

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<sup>5</sup>This is the case for the generous flat-rate benefit for childcare or the grant for the first marriages (Popescu et al. 2016).

<sup>6</sup>OECD (2018). *Key policies to promote longer working lives: Country note 2007 to 2017 Romania*, [https://www.oecd.org/countries/romania/Romania\\_Key%20policies\\_Final.pdf](https://www.oecd.org/countries/romania/Romania_Key%20policies_Final.pdf). Accessed 19 March 2020.

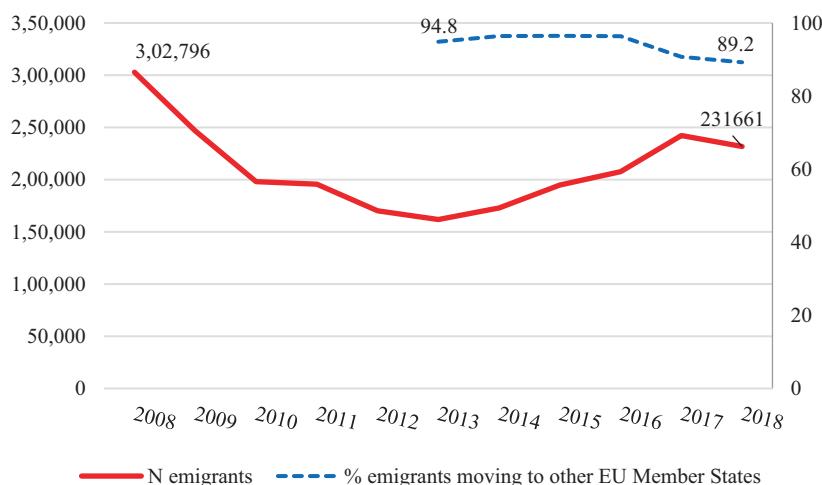
<sup>7</sup>Government Emergency Ordinance no. 79/2017 for amending and completing Law no. 227/2015 regarding the Fiscal Code. [https://static.anaf.ro/static/10/Anaf/legislatie/OUG\\_79\\_2017.pdf](https://static.anaf.ro/static/10/Anaf/legislatie/OUG_79_2017.pdf). Accessed 19 March 2020.

<sup>8</sup><http://business-review.eu/news/world-bank-chief-economist-said-that-romania-should-change-the-whole-social-protection-system-and-gave-up-the-flat-tax-188277>. Accessed 19 March 2020.

## 24.2.2 Migration History and Key Policy Developments

Population decline, population aging and emigration can briefly summarize the main demographic trends in Romania after 1990. According to the National Institute of Statistics,<sup>9</sup> the demographic challenge that Romania is facing is the result of natural decline (i.e. fertility rates below the replacement level), migration, and the difficult socio-economic conditions of post-communism. After 2002, when EU Member States agreed to lift visa requirements for Romanians, the intensity of migration outflows rapidly increased, while the destination countries diversified (Vintila and Soare 2018). Rapidly, Romania has become one of the main migrant sending countries in the region (Zaharia et al. 2017).<sup>10</sup>

Figure 24.1 shows the evolution of the number of long-term emigrants from Romania since 2008, with more than 2,3 million individuals having left Romania. The vast majority of them moved to other EU countries. From a longitudinal perspective, long-term emigration peaked between 2002 and 2008, although it decreased from 2008 to 2013, in parallel with the most critical years of the



**Fig. 24.1** Long-term emigrants from Romania (during the year of reference, 2008–2018). (Source: Vintila and Soare (2018), updated based on Eurostat (2019): *emigration by age group, sex and citizenship* [migr\_emi1ctz]. Available at: <http://ec.europa.eu/eurostat/data/database> (Accessed 19 March 2020))

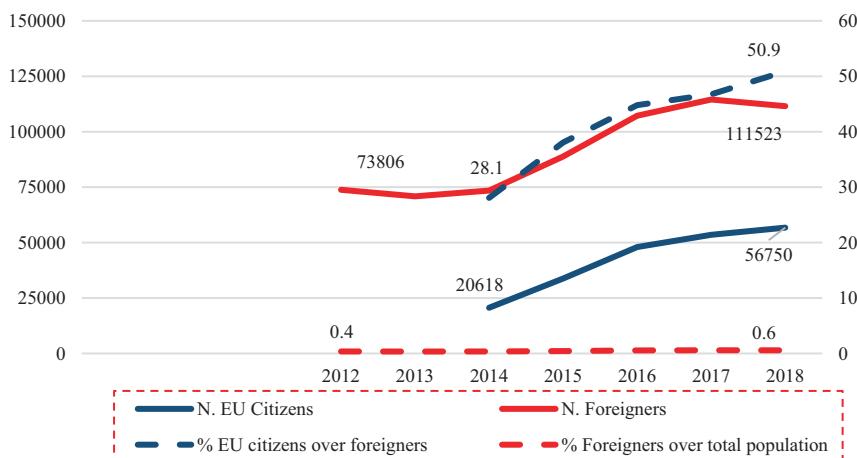
<sup>9</sup>National Institute of Statistics (2017). *Proiectarea populației României în profil teritorial la orizontul anului 2060*. [http://www.insse.ro/cms/sites/default/files/field/publicatii/proiectarea\\_populatiei\\_romaniei\\_in\\_profil\\_teritorial\\_la\\_orizontul\\_2060.pdf](http://www.insse.ro/cms/sites/default/files/field/publicatii/proiectarea_populatiei_romaniei_in_profil_teritorial_la_orizontul_2060.pdf). Accessed 19 March 2020.

<sup>10</sup>See also: International Organization for Migration (2018). *World Migration Report 2018*, <https://www.iom.int/wmr/world-migration-report-2018>. Accessed 19 March 2020.

economic crisis. According to Eurostat data,<sup>11</sup> by 2019, more than 3,5 million Romanians were living in other EU Member States, with Italy hosting the largest population of Romanian emigrants (1,2 million in 2019), followed by Spain (around 670,000). Over time, the corridors involving Italy and Spain were maintained by migration networks established during the early 1990s, the availability of jobs, and language similarities (Vasilescu 2018). High numbers of Romanians also took up residence in Germany, the United Kingdom (UK) and France (Vintila and Soare 2018).

Long-term emigration increased especially among young people, as over 65% of non-resident Romanians are between 18 and 39 years old (Zaharia et al. 2017). Thus, Romania has become the EU country with the highest emigration rate of active labour market participants (Vasilescu 2018). Among highly qualified emigrants, there are IT specialists, doctors and students whose main reasons for emigrating are linked to job search and studies, while corruption, political instability or the poor quality of public service are the main reasons for not returning to Romania (Vasilescu 2018). The large number of young emigrants also led to diminishing fertility rates, as the decision to migrate is positively correlated with the decision to postpone or even renounce to having children (Popescu et al. 2016).

Compared to the sizeable Romanian diaspora, the number of foreigners residing in Romania is very limited. Figure 24.2 shows that the total number of foreigners



**Fig. 24.2** Stock of non-national residents in Romania (total numbers and %) (2012–2018). (Source: Vintila and Soare (2018), updated based on Eurostat (2019): *population on 1 January by age group, sex and citizenship [migr\_pop1ctz]*. Available at: <http://ec.europa.eu/eurostat/data/database>. (Accessed 19 March 2020). “EU citizens” refer to non-national EU citizens residing in Romania)

<sup>11</sup> Eurostat (2019). *Population on 1 January by age group, sex and citizenship [migr\_pop1ctz]*, <http://ec.europa.eu/eurostat/data/database>. Accessed 19 March 2020.

residing in Romania has generally increased during the last years. Yet, their share over the total population remains very low (around 0.5%). Until 2017, most non-national residents were third-country nationals, mainly coming from the Republic of Moldova, Turkey, China and Syria (Zaharia et al. 2017). However, by 2018, mobile EU citizens accounted for almost a half of the foreign population in Romania, with most of them originating from Italy, France, and Germany (Vintila and Soare 2018). The majority (60%) of foreigners living in Romania are male and around 1/5th of them moved to Romania for studies. Only a small share (5%) have a small business in Romania. Therefore, as a labour force or economic potential, immigration to Romania does not present a large potential due to its reduced number and type of immigration (Zaharia et al. 2017).

In response to these demographic changes, Romania's migration policy has started to crystallize in recent years, being shaped by different factors. Until 1989, Romania was a closed country in which many people lived as temporary internal migrants in cities, coming from villages and not having the possibility of getting a permanent residence, especially in larger cities (Sandu et al. 2004). Around 100,000 Germans (who did not have the possibility to leave the country before 1989) left Romania for permanent residence in Germany. After 1992, the rate of external migration registered a sharp decline, with a second decrease of external migration being observed after 1998. Within this context, the Romanian institutions developed different programmes and initiatives to incentivize the return of Romanian emigrants. As for immigrants, the main legislative documents regulating the rights of EU citizens in Romania have been adapted to the European legislation after the country's accession to the EU. In recent years, Romania also adopted the National Immigration Strategy for the period 2015–2018,<sup>12</sup> which established as policy priorities the need to attract highly skilled workers, to cooperate with third countries, and to combat illegal immigration and human trafficking. Maintaining national safety and keeping investors in Romania were also priorities of this strategy that aimed to encourage the immigration of third-country nationals wishing to develop businesses in Romania. Overall, when it comes to immigration, Romania scores well with respect to anti-discrimination of immigrants, although it lacks a functioning integration system (Wagner et al. 2018).

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<sup>12</sup>Apart from the Strategy on immigration and the Labour Code, there are several specific laws applicable only to foreigners, mainly concerning their access to employment in Romania: Government Ordinance no. 25/2014 on employment and detachment of foreigners (<http://legislatie.just.ro/Public/DetaliiDocument/160962>); Government Ordinance no. 44/2004 on the social integration of foreigners (<http://legislatie.just.ro/Public/DetaliiDocument/49507>) and its Methodological Norms; Law no. 122 of 4 May 2006 on asylum in Romania (<http://legislatie.just.ro/Public/DetaliiDocument/71808>); Government Emergency Ordinance no. 194 of 12 December 2002 on the regime of foreigners in Romania ([https://www.mae.ro/sites/default/files/file/anul\\_2016/2016\\_pdf/2016.11.01\\_anexa\\_4\\_oug\\_194-2002.pdf](https://www.mae.ro/sites/default/files/file/anul_2016/2016_pdf/2016.11.01_anexa_4_oug_194-2002.pdf)). All links were accessed on 19 March 2020.

## 24.3 Migration and Social Protection in Romania

After joining the EU, Romania adopted the social security coordination Regulation 883/2004<sup>13</sup> and Regulation 492/2011 on freedom of movement for workers<sup>14</sup> that enables equal treatment of non-national EU citizens living in Romania with Romanian nationals on aspects such as eligibility for employment, remuneration, conditions of work or dismissal, access to housing, family benefits, etc. Similarly, Romanian citizens enjoy equal rights while residing in other EU countries. Overall, access of citizens and non-citizens to social benefits in Romania is strongly related to their residence, past contributions and specific elements characterizing individual cases.

The social protection rights of Romanians residing in non-EU countries and of third-country nationals residing in Romania – groups that are less sizeable when compared to the intra-EU mobility from and to Romania – are mainly regulated via bilateral social security agreements signed with third countries. These agreements are negotiated at high-level social security administration and they vary substantially in terms of coverage, depending on the needs of the population residing in each country and the available budget. Currently, social security agreements are in place with the Russian Federation (1960), Algeria (1982), Peru (1982), Morocco (1983), Libya (1977), Turkey (2002), Macedonia (2007), Canada (2009), the Republic of Korea (2009), the Republic of Moldova (2010), Israel (2011), Albania (2015), Quebec (2015) and Serbia (2016). Moreover, a series of bilateral health agreements and conventions<sup>15</sup> were signed to protect Romanian citizens residing in non-EU countries and third-country nationals living in Romania. Yet, the coverage of these agreements is quite asymmetrical. For example, the agreement with Israel covers invalidity insurance and pensions, while the one with Canada does not. Similarly, the agreement with Moldova covers more than 11 types of benefits.

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<sup>13</sup> Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02004R0883-20140101>. Accessed 19 March 2020.

<sup>14</sup> Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011R0492>). Accessed 19 March 2020.

<sup>15</sup> List of bilateral agreements available at: <http://www.cnas.ro/media/pageFiles/List%C4%83%20%20acordurilor,%20conven%C5%A3ilor%20%C5%9Fi%20%C3%AEn%C5%A3elegerilor%20bilaterale%20%C3%AEncheiate%20la%20nivel%20de%20stat%20%C5%9Fi%20de.pdf>. Accessed 19 March 2020.

### 24.3.1 *Unemployment*

In 2019, the unemployment rate in Romania reached one of the lowest levels (3,9%) during the last 20 years.<sup>16</sup> The Government Emergency Ordinance (GEO) 126/2008<sup>17</sup> made a first step in eliminating the connection between unemployment benefits (*indemnizație de șomaj*)<sup>18</sup> and the level of the guaranteed minimum wage. This means that those applying for unemployment benefits are jobless, have no income, or have a lower income than the value of the reference social indicator. A special category of unemployment benefits (*venitul lunar de completare*) concerns the persons belonging to collective dismissal in the defense production and state-owned companies (GEO 36/2013).<sup>19</sup>

Unemployment benefits are available to national and non-national employees and self-employed who are over 16 years of age and have contributed to the Romanian National Agency of Employment (*Agenția Națională pentru Ocuparea Forței de Muncă* – ANOFM) for at least 12 months in the last 24 months prior to their application. The duration of unemployment benefit depends on the completed period of contributions: 6 months (for persons with a contribution period of at least 1 year), 9 months (for those who have contributed for at least 5 years) and 12 months (for persons with a contribution period of more than 10 years). Graduates who do not find a job within 60 days after graduation receive unemployment benefits for 6 months. The law<sup>20</sup> also distinguishes between categories of residents who are compulsory insured for unemployment benefits (i.e. civil servants, elected office holders, etc.) and persons who can voluntarily insure themselves for unemployment benefits. Among these, there is an explicit reference to the eligibility to be insured for unemployment benefits for Romanian citizens working abroad, foreign citizens or stateless persons who are employed or have earnings.

To access unemployment benefits, one needs to prove a paid legal contract. However, having resided in an EU country makes one eligible for totalization of all contribution periods collected in Romania and other EU Member States and paid by the last country of employment. When based in another EU Member State, one can

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<sup>16</sup> Eurostat (2019). *Total unemployment rate* [TPS00203], <http://ec.europa.eu/eurostat/data/database>. Accessed 19 March 2020.

<sup>17</sup> Government Emergency Ordinance no. 126 of 8 October 2008 on the modification and completion of some normative acts in order to eliminate the links between the level of the rights granted from the unemployment insurance budget and the level of the minimum gross basic salary in the country and to establish the measures for applying some community regulations. <http://legislatie.just.ro/Public/DetaliiDocumentAfis/98026>. Accessed 19 March 2020.

<sup>18</sup> Romania does not have a special unemployment assistance scheme.

<sup>19</sup> GEO no. 36 of 30 April 2013 on the application in the period 2013–2018 of social protection measures granted to the persons belonging to collective dismissal. <http://legislatie.just.ro/Public/DetaliiDocument/160962>. Accessed 19 March 2020.

<sup>20</sup> Law no. 76 of 16 January 2002 regarding the unemployment insurance system and the stimulation of employment. [http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L76-2002\\_act.pdf](http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L76-2002_act.pdf). Accessed 19 March 2020.

send the request for totalization to the National Agency for Employment Directorate for International Relations. When moving to another EU country, a Romanian citizen who becomes unemployed in the EU country where he/she last worked will receive cash benefits due to activity as an employed or self-employed. In this case, the citizen will remain subject to the legislation of the country in which he/she was last insured while working. If the Romanian citizen is a non-active person, he/she is subject to the legislation of the country of residence. Lastly, if a Romanian/EU citizen cannot find a job in Romania, he/she can move to another EU country to search for work for 3 months (with the possibility of extension up to a maximum of 6 months). In this case, individuals must inform the Romanian authorities and the authorities of the EU Member State where one searches for work. Those who are not able to find work after 3 months will have to return to Romania and inform national authorities about their return.

### **24.3.2 Health Care**

The public health care system in Romania is financed mainly through contributions (Law no. 95/2006<sup>21</sup>). The low value of the contribution and the shrinking of the working population negatively affects the health expenditure per capita and becomes a fertile breeding ground for corruption (Popescu et al. 2016). Health benefits in-kind are available for those who contribute to the medical system, prove disability status or long-term care eligibility. Inspired by the UK health system model, insured people can access a basic package of medical services free of charge.<sup>22</sup> They have to pay for medicines if not hospitalized and they can register on the patient list of a family doctor (general practitioner). Uninsured individuals can only access a minimal package of medical services in cases of urgent surgery, birth, tuberculosis or other epidemic diseases.<sup>23</sup> Except for the minimal package of healthcare, uninsured persons have to pay the full cost of the medical treatment.<sup>24</sup> Some categories of citizens are insured without paying contributions, whereas others can benefit from contributions paid on their behalf by a third party.

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<sup>21</sup> Law no. 95 of 28 August 2015 on the reform in the health field. <https://lege5.ro/Gratuit/g42tmnjsgi/legea-nr-95-2006-privind-reforma-in-domeniul-sanatati?d=12.05.2019>. Accessed 19 March 2020.

<sup>22</sup> For more details: <http://www.cnas.ro/page/drepturile-si-obligatiile-asiguratilor.html#>. Accessed 19 March 2020.

<sup>23</sup> Decision no. 140 of 21 March 2018 for the approval of the packages of services packages and the Framework Contract that regulates the conditions of medical assistance, medicines and medical devices in the social insurance system for the years 2018–2019. <http://www.casan.ro/casanba/media/postFiles/HG%2020140-CONTRACT%20CADRU%202018-2019.pdf>. Accessed 19 March 2020.

<sup>24</sup> For more details: <http://www.cnas.ro/page/pachetul-minimal-de-servicii-medicale-in-asistenta-medicala-ambulatorie-de-specialitate -pentru-specialitate-clinice.html>. Accessed 19 March 2020.

In terms of migrants' access to the public health care system, one challenging aspect for authorities is to trace the number of immigrants residing in Romania who are medically insured or have access to a family doctor. Despite the small size of the foreign population, authorities still find it hard to identify the number of insured migrants and the type of insurance they benefit from. The insured status and the insurance rights are lost when foreigners lose the right to reside in Romania. Undocumented migrants are particularly vulnerable given the strong barriers they face for accessing basic medical services, emergency and basic social protection in Romania (Alexe and Paunescu 2011). Similar to other EU countries, Romania also counts with a high decentralisation and autonomy in the administration of the Health Insurance Fund. This is the reason why, in cases of mobility within or outside the EU, the regional and local insurance institutions need to be informed of the context and duration of the stay abroad, so that they can issue all necessary documents and communicate with the health insurance institutions in the country of destination.

Sickness benefits in cash require claimants to prove the incapacity for work due to sickness certified by a doctor, a medical certificate issued from the first day of incapacity and a notification of the employer within 3 days. Access to sickness benefits is conditioned by a period of at least 6 months of contributions within the last 12 months. The legal framework refers to the general category of "insured people" without explicit reference to a nationality criterion. GEO 158/2015<sup>25</sup> distinguishes between different types of medical leave (*concediu medical*) and associated cash benefits (*indemnizație*) covering: (a) temporary incapacity to work due to illness or accidents outside the workplace; (b) incapacities due to accidents at work and occupational diseases; (c) maternity; (d) childcare and; (e) risks linked to maternity. Family physicians can prescribe up to 14 days leave and the legal framework guarantees an extension up to 90 calendar days per year upon the recommendation of specialists or hospital doctors. The maximum duration for a sick leave is 180 calendar days per year.

Disability benefits are available to national and foreign residents insured under the public pension system who have lost at least half of their capacity to work as certified by the social insurance medical expert. Once they have obtained a disability pension, recipients must undergo periodic medical checks at intervals of between 1 and 3 years until they reach the standard retirement age. Failing to attend this medical assessment leads to the suspension of the disability pension. Both Romanian and foreign citizens can export their invalidity pension from Romania in case they decide to move abroad.

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<sup>25</sup> GEO no. 158 of 17 November 2005 regarding holidays and social health insurance benefits. [http://www.cnas.ro/cascluj//theme/cnas/js/ckeditor/filemanager/userfiles/Anunturi\\_Medici\\_2016/OUG\\_\(A\)\\_158-2005\\_CM\\_actual Ian\\_2018.pdf](http://www.cnas.ro/cascluj//theme/cnas/js/ckeditor/filemanager/userfiles/Anunturi_Medici_2016/OUG_(A)_158-2005_CM_actual Ian_2018.pdf). Accessed 19 March 2020.

### 24.3.3 *Pensions*

The Romanian public pension scheme is regulated by Law no. 263/2010.<sup>26</sup> Eligibility for a contributory pension is evaluated based on claimants' age and prior contribution to the pension scheme. To qualify for an old-age pension (*pensie pentru limită de vîrstă*), claimants must have reached the standard retirement age (65 years for men and 60 years and 9 months for women, to increase gradually to 63 years by January 2030) and have contributed to the pension scheme for at least 15 years (the full contribution period is 35 years for men and 30 years and 9 months for women, to be increased to 35 years by January 2030). Lower age requirements apply to persons employed in arduous work and certain categories of individuals with disabilities. Eligible claimants can also receive an early retirement pension without penalties (*pensie anticipată*) granted up to 5 years before the standard retirement age to those who have contributed for at least 8 years longer than the full contribution period. They can also apply for a partial early retirement pension with penalties (*pensie anticipată parțială*) granted up to 5 years before the standard retirement age to those having completed the full contribution period and those having exceeded by up to 8 years the full contribution period.

The law also foresees the possibility for nationals residing abroad to access and export pensions from Romania. The criteria of nationality and residence are fine-tuned. Article 5 of the law specifies that “(1) The contributors to the public pension system may be Romanian citizens, citizens of other states or stateless persons, while they have, according to the law, their domicile or residence in Romania. (2) The public pension system can insure also Romanian citizens, citizens of other states and stateless persons who do not have their domicile or residence in Romania, under the conditions provided by the legal instruments of international character to which Romania belongs”. Furthermore, foreigners who have worked in Romania can also benefit from the public contributory pensions although they no longer reside in Romania (GEO 194/2002, with amendments).

Contributors are subject to a public pay-as-you-go pension scheme. Contributions are compulsory for employers, employees, and self-employed and the total contribution rate differs depending on working conditions. The pension funding system of the first pillar witnessed some changes in 2018. As mentioned, the contribution rates for pensions increased to 25% and it is entirely up the employee only to pay the premiums. These contributions are paid by all those residing and working in Romania.

In addition to the public contributory pension, the social allowance for pensioners (*indemnizația socială pentru pensionari*) is a non-contributory benefit available to pensioners residing in Romania whose pension amount is below the

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<sup>26</sup> Law no. 263 of 16 December 2010 regarding the unitary system of public pensions. <http://www.mmmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L263-2010.pdf>. Accessed 19 March 2020.

guaranteed minimum social pension.<sup>27</sup> This allowance is granted upon three criteria: be a pensioner of the public pension system, irrespective of the retirement date; have a domicile in Romania; have a pension of less than 400 RON. No forms of exclusions based on claimants' nationality are mentioned in the text of the law.

#### **24.3.4 Family Benefits**

There are several types of family-related benefits in Romania. The maternity leave and allowance (*concediu medical și indemnizația pentru maternitate*) are granted to women who are legally residing in Romania and have contributed for at least 6 months to the social insurance system during the last 12 months prior to the maternity leave. No explicit form of exclusion based on citizenship is mentioned in the text of the law. The maternity leave period consists of 63 days before birth and 63 days of postnatal leave. This is a compulsory social insurance scheme for all inhabitants financed mainly by contributions for employees and self-employed, providing an earnings-related benefit. No membership on a voluntary basis is allowed. If moving to another EU country, social security coordination foresees that the country of insurance is responsible for paying maternity or paternity benefits to Romanian citizens according the national rules.

The paternity leave (*concediu paternal*) lasts 5 days, conditional to extension up to 10 days if special fatherhood training is carried out. EU and non-EU citizens are eligible to claim this benefit under the same conditions as Romanian citizens. The paternity leave is granted only if the father is an employee and the amount received equals the salary corresponding to the respective working days.

Parental benefit is a replacement income and a contributory benefit intended to provide an income source for parents unable to work due to child-care responsibilities. The benefit is paid upon the criterion of residing in Romania, irrespectively of claimants' nationality. Romania grants a child-raising leave (*concediu pentru creșterea copilului*) and benefit (*indemnizație pentru creșterea copilului*) to natural parents, individuals who hold the temporary custody of a child and legal guardians, upon the criterion of residence in Romania. There is no exclusion from access to these benefits based on citizenship and the child-raising leave and benefit are granted until the child's second birthday (or for the first 3 years for disabled children, with a possible extension up to 7 years).

Finally, the state allowance for children (*alocăție de stat pentru copii*) is a cash benefit granted to children aged up to 18 who are legally residing in Romania. The allowance is extended to young persons aged over 18 attending secondary or vocational education courses. According to the dispositions of Law no. 61/1993, all Romanian, foreign or stateless children living in Romania are entitled to receive the state allowance.

<sup>27</sup> Law no. 118 of 30 June 2010 regarding some necessary measures to restore the budget balance. [https://www.protectiacopilului6.ro/Files/legislatie/2010/L118-2010%20\(30%20iunie%202010\).pdf](https://www.protectiacopilului6.ro/Files/legislatie/2010/L118-2010%20(30%20iunie%202010).pdf). Accessed 19 March 2020.

### 24.3.5 Guaranteed Minimum Resources

Currently, Romania guarantees three types of social aids for people with low income<sup>28</sup>: the guaranteed minimum income (*venitul minim garantat*), the family support allowance (*alocatia pentru susținerea familiei*) and the aid for heating the house (*ajutorul de încălzire*). The guaranteed minimum income has been designed as a targeted response to the risks of poverty and exclusion, by guaranteeing both subsistence and incentives to work. It can be received for an unlimited duration and it is designed as a supplement to the applicant's net income. The guaranteed minimum income scheme was implemented as a means-tested programme in 1995, reformed in 2001, and adjusted on a regular basis since then. To qualify for social aid, both families and single persons aged over 18 whose net monthly income is below the guaranteed minimum income must not own certain goods or properties. Recipients who are able to work and are not in full-time education must perform monthly community service at the request of the mayor of the municipality of residence or domicile.

The family support allowance (*alocatie pentru susținerea familiei*) targets families with low income who raise and look after children aged up to 18. The legal criteria for accessing this scheme refer to residence in Romania. The criteria of calculation of the amount take into account the income and number of children. The maximum income limits up to 370 RON per family member. The eligibility is explicitly extended from families whose members are Romanian citizens residing in Romania to families whose members do not hold the Romanian nationality, but reside in Romania (i.e. both EU and non-EU foreigners).

## 24.4 Conclusions

This chapter examined to what extent the Romanian welfare system covers its resident citizens compared to foreigners residing in Romania and Romanians residing abroad. In doing so, it aimed to elucidate the role of the welfare state in the entire migration landscape of the country, by addressing niche policy questions. It examined the coverage of the national welfare system when it comes to a variety of risks at different life-cycle stages, such as unemployment, poverty, sickness, and old age.

Despite regular back-and-forth in the definition of social policies, the current Romanian social protection system has a comparable design with other Western European welfare states with regard to family and social insurance benefits, although lower health expenditure and investment in employment services (Pop 2013). The EU membership has induced policy-makers to adapt the welfare system with a view to allow EU citizens to benefit from national provisions in this field (Popescu et al.

<sup>28</sup>For more details: <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L416-2001.pdf>. Accessed 19 March 2020.

2016). Non-EU citizens with a residence permit were also included among the beneficiaries. Overall, our findings indicate that the Romanian welfare state is open towards its residents, regardless of their nationality, thus providing everyone equal grounds for accessing social benefits. This is particularly the case for residents contributing to social security taxes and active age workers. In terms of access to the social benefits analysed in this chapter, there are no particular distinctions between resident citizens and (EU or non-EU) foreigners living in Romania. However, the Romanian legislation specifically links access to certain benefits to the requirement of having one's residence or domicile in Romania. Consequently, nationals residing abroad as often excluded as potential beneficiaries of certain welfare entitlements when compared to their resident counterparts. Yet, specific benefits such as the contributory old-age pension or the invalidity pension can be exported in case recipients decide to move abroad. Moreover, the EU social security coordination framework also guarantees for a short-term exportability of unemployment benefits for Romanian citizens who decide to move to other EU Member States in search for a job.

The post-communist regulatory framework of the Romanian social protection system has been rather unstable, witnessing numerous changes and amendments. Over the last decade, the challenges faced by the welfare system – economic constraints, demographic decline, changes at the household structure, migration – have been progressively contrasted by scaling back the state. The post-2010 neoliberal turn was a direct by-effect of the emergency situation created by the negative GDP growth in 2009 and the increasing deficit. Beyond these contextual stimuli and the relevance of the fiscal constraints under economic crisis, the literature laid emphasis on political power-related explanations. It is the case of the negative *a priori* for social spending among politicians that culminated with the proposal of president Băsescu to eliminate Article 47 from the Constitution (Popescu et al. 2016). Referring to the state's obligation to guarantee social protection and a decent living standard for its citizens, Article 47(2) lists the main social rights guaranteed to citizens (i.e. the right to pensions, paid maternity leave, medical care in public health centres, unemployment benefits, etc.). The criminalization of the poor sapped public confidence, welfare recipients increasingly being suspected of making fraudulent claims or insufficient efforts to support themselves autonomously. Despite alternation in Government, the politics of retrenchment has been maintained. The quest to deregulate labor relations and the maintenance of low social costs have become generally shared and despite long periods of economic growth, the quality of life, poverty and social inequality indicators do not illustrate major improvements.

Within this context, while globalization has increased migration flows across Europe, Romania clearly reports more emigration than immigration. As such, the country registers one of the lowest share of (EU and non-EU) non-national residents (see Vintila and Lafleur *in this volume*). Confronted with a limited number of potential foreign participants to the welfare provisions, the legal framework does not mention forms of implicit or explicit exclusion. The criterion of residence on the Romanian soil is, however, prevalent, and relatively few provisions are extended to non-resident Romanian citizens. Considering the size of the Romanian diaspora,

increased coordination is needed to guarantee a full access to the social rights guaranteed by the Constitution. On the long run, the (slow) growing non-EU migration remains a challenge for the welfare state, requiring increasingly targeted social assistance and education policies to enhance social integration and cohesion. This is an element still to be developed by the Romanian social system.

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# Chapter 25

## Migrants' Access to Social Protection in the Slovak Republic



Jaroslav Kováč

### 25.1 Overview of the Welfare System and Main Migration Features in the Slovak Republic

This chapter aims to analyse the social protection system in the Slovak Republic. In doing so, it offers an overview of the conditions of access to different social benefits (health care, unemployment, pensions, family benefits and guaranteed minimum resources) of national residents, non-national residents and non-resident nationals.

#### 25.1.1 *Main Characteristics of the National Social Security System*

After 1989, the Slovak Republic faced important challenges related to the transformation of the socialist economy into a market-based economy and the change of the socialist social welfare system into a modern social security system. The country not only had to build a concept of social policy and define the specific state policies towards particular social groups, but it also had to define the main role of citizens' social needs in the social policy of the new state.

The social security system in the new Slovak Republic struggled to respond to changing socio-economic conditions derived from the transition to a market-based economy, and to properly address ongoing societal and demographic changes. The main aim of the transformation of social policy was to create a socially fair social security system based on citizens' personal participation, social solidarity and state guarantee. It was assumed that through economic activity, citizens would be able to

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provide for themselves, although the state's support was also expected in specific circumstances. Moreover, basic living conditions in case of material and social need also had to be ensured in accordance with the Slovak Constitution. During the 1990s, the development of the social policy was marked by the adoption of several conceptual documents, including the Social Reform Scenario (1990), the Rescue Social Network (1990) and the Concept of Transformation of the Social Policy (1996).<sup>1</sup> Between 1993 and 1998, the Government pursued an economic policy strategy of a gradual approach, while new institutions were created in the field of social policy (the Social Insurance Agency, the National Labour Office and a complex system of health insurance companies).

The Ministry of Labour, Social Affairs and Family continued this process of reforms and systemic changes in 2002, with new initiatives being launched on the basis of the "Strategy for promoting employment growth through changes in the social system and labour market". The year 2004 marked the last important social policy transformation in Slovakia, leading to the establishment of state administration bodies and the adoption of a series of new key legislative acts and measures.

Regarding the sickness and pension systems (designed during the 1950s and 1960s), the reform concentrated mainly on their financial and institutional management; and the decisive factor in the transformation of the existing social welfare system into a public social insurance system was the comprehensive tax reform of 1st of January 1993. As part of social security, a substantial share of the social assistance system for families with children was also implemented. These were elements of direct financial assistance based on a system of benefits, indirect aid, in-kind assistance and services. Social welfare included the provision of benefits in cash, in kind, and social welfare services, including institutional welfare, to citizens in vulnerable situations who were unable to provide for themselves.

The current social protection system in Slovakia comprises social insurance and health insurance system, state social support benefits and material need assistance. These three subsystems differ from each other in terms of the principles on which they are built, the type of coverage for specific risks, and their funding and management procedures. The Slovak public health insurance system includes all benefits in kind provided under the mandatory social security system that do not fall within the sphere of private health services, i.e. services for which the patient pays the doctor directly. It is a universal public healthcare scheme for all residents, funded by compulsory insurance contributions paid by employees, employers, and the self-employed.

The social insurance system covers all employees and self-employed individuals<sup>2</sup> and comprises:

- the sickness insurance against loss or reduction of income for health reasons, providing income in case of temporary loss of working capacity, pregnancy and childbirth;

<sup>1</sup>Ministry of Labour, Social Affairs and Family of the Slovak Republic (1996). Concept of Transformation of the Social Policy of the Slovak Republic.

<sup>2</sup>Police officers, career soldiers and recruits have separate provisions for social protection.

- the pension insurance, including the old-age insurance (that guarantees an income for the elderly and pays pensions to survivors of deceased beneficiaries) and the invalidity insurance (that guaranteed a pension in the event of reduction or loss of a beneficiary's ability to engage in gainful employment or self-employment due to long-term health problems, and upon his/her death);
- the occupational injury insurance, covering damage to health or death following an accident at work, an injury in the performance of one's duties or an occupational disease;
- the unemployment insurance, providing insurance against loss of income in case of unemployment and ensuring an income to persons who lose their job;
- the guarantee fund, protecting an employee against the risk of an employer's inability to honour his/her commitments and paying old-age insurance contributions due by the employer to the basic old-age savings plan (Bednárik 2018).

The Slovak mandatory pension insurance regime is based on two foundations: the mandatory old-age insurance regime with defined contributions financed by redistribution and managed by the Social Insurance Agency (thereinafter SIA); and the mandatory pension savings system with defined contributions financed by capitalisation and managed by private pension fund management companies. The pension plan is based on savings invested in an individual account intended, together with the old-age insurance provided by the relevant legislation, to guarantee an income to the beneficiary in retirement or to his/her descendants in case of death.

The role of state social support is to provide targeted support to individuals or families (usually with dependent children). It provides family-related cash benefits and death grant which are financed by the state budget. All state social support benefits are non-contributory cash benefits (Gejdošová 2012). On the other hand, social assistance is used in situations where other resources that could help individuals or families to overcome a life-threatening situation are not available and citizens are unable to overcome this unfavorable situation by themselves. The social assistance scheme provides material need assistance, including benefits in cash and kind granted in cases of serious financial difficulties through the Labour, Social Affairs and Family Office (OLSAF) or local authorities/municipalities.

### **25.1.2 *Migration History and Key Policy Developments***

In August 2011, the Slovak Government approved a medium-term strategy in the area of migration.<sup>3</sup> Covering the period until 2020, this policy strategy mainly aims to create adequate conditions for the reception and integration of migrants in the area of legal migration; strengthen the effectiveness of border control and fight against illegal migration; contribute to the adoption of a unified European asylum

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<sup>3</sup>The migration policy of the Slovak Republic with a view to 2020 (2011). Ministry of Labour, Social Affairs and Family of the Slovak Republic. <https://www.employment.gov.sk/sk/informacie-cudzincov/dokumenty/>. Accessed 10 March 2019.

system; and participate in the development of global partnerships with countries of origin and transit. The implementation of this migration policy is based on the coordination between state authorities, local state administration bodies, and self-governments and it assumes a wide involvement of non-governmental actors developing activities in this area.

The current demographic developments show that the Slovak labour market and the system of social security are significantly dependent on the inflow of human capital from abroad. The basic criterion for the acceptance of foreigners within the controlled economic migration is their potential for the development of the Slovak economy, with certain preferences for migrants from culturally related countries and those having the necessary qualifications and competencies to satisfy labour market shortages.

Slovakia is not a traditional country of destination for migrants. It is a culturally homogeneous country which was not been affected by the dramatic increase of migration during the twentieth century. Until recently, Slovakia was almost exclusively a country of emigration, although the accession to the European Union (EU) started to change this pattern. Since 2004, legal migration to Slovakia has increased more than five times, from 22,108 migrants in 2004 to 121,264 in 2018. Although Slovakia registered the second highest increase of the foreign population across all EU countries during the period 2004–2008, the share of foreigners from the overall population still remains quite low - 2.2%. In fact, only Bulgaria, Croatia, Lithuania, Romania and Poland have lower proportions of foreigners in the total population.<sup>4</sup>

Despite of that, Table 25.1 shows that the number of foreigners residing in Slovakia has constantly increased since 2015; and in 2018, the number of third-country nationals living in Slovakia was even higher than the number of foreigners originating from other EU Member States.

During the period 2014–2017, most residence permits issued for third-country nationals were granted to nationals of Ukraine, followed by citizens of Serbia, Vietnam and Russia, respectively (Table 25.2). Given the increased proportion of Serbian nationals working in Slovakia, especially in low-qualification jobs in manufacturing, the Slovak Republic and Serbia signed a Protocol on mutual cooperation on work and employment in November 2017.

**Table 25.1** Foreigners with residence permits in Slovakia (2015–2018)

	31.12.2015	31.12.2016	31.12.2017	31.12.2018
Third-country nationals	35,261	41,232	50,395	65,381
EU nationals	49,526	52,015	54,056	55,883
<b>Total</b>	84,787	93,247	104,451	121,264

Source: Statistical Overview of Legal and Illegal Migration in the Slovak Republic, Presidium of the Police Force Bureau of Border and Foreign Policy, data extracted from the Statistical Overview in 2016–2018 on 22.03.2019. Available at: <http://www.minv.sk/?rocenky>

<sup>4</sup> International Organization for Migration. Migration in Slovakia. <https://www.iom.sk/en/migration/migration-in-slovakia.html>. Accessed 19 March 2019.

**Table 25.2** First residence permits granted in Slovakia: top three non-EU nationalities (2014–2017)

2014	2015	2016	2017
Ukraine (1592)	Ukraine (3340)	Ukraine (3016)	Ukraine (4286)
Serbia (830)	Serbia (1394)	Serbia (2076)	Serbia (4140)
Russia (494)	Syria (899)	Russia (743)	Vietnam (1114)

Source: Eurostat migration statistics (mig\_resfirst), data extracted from the Factsheet – Slovak Republic – 2017 on 22.03.2019

Three ministries have competencies in terms of migration management: the Ministry of Interior, the Ministry of Foreign and European Affairs, and the Ministry of Labour, Social Affairs and Family. The Central Office of Labour, Social Affairs and Family coordinates and directs the work of 46 subordinate regional labour offices that are responsible, among others, for granting work permits to foreign residents. Granting residence permits, registering residence and detecting and preventing illegal migration is overseen by the Aliens Police Departments of the Bureau of Border and Alien Police of the Police Force Presidium. As for entry procedures, the legislation distinguishes between temporary residence and permanent residence.<sup>5</sup> A temporary residence is generally granted for a period exceeding 90 days for different reasons (including employment, business, study, research and development, family reunification, etc.). On the other hand, the Act on Residence of Aliens differentiates between permanent residence for five years, permanent residence for unlimited period and long-term residence. The permanent residence for five years is mainly granted for the purpose of family reunification or if it is in the interest of the Slovak Republic. A foreigner may also apply for tolerated stay for specific purposes defined by the law. Moreover, it is important to highlight that all foreigners entering Slovakia have the obligation to report their place of stay in Slovakia at the Department of Foreign Police. EU citizens and their family members are obliged to report their stay no later than 10 working days, while third-country nationals must do so within three working days from the date of entry in Slovakia.<sup>6</sup>

Foreigners' access to the labour market consists of two steps: obtaining a work permit and subsequently a temporary residence permit for the purpose of employment. A work permit is not required if the foreigner holds a permanent residence permit, a temporary residence permit for the purpose of family reunification for more than 12 months, for the purpose of study or if he/she maintains the status of a Slovak living abroad. Given the lack of qualified workforce in several professions in the Slovak labour market, a simplification of the conditions for hiring third-country nationals was proposed in 2017 for sectors with ongoing labour shortages, and for

<sup>5</sup>The Organisation of Asylum and Migration Policies Factsheet: Slovak Republic. EMN study on Organisation of Asylum and Migration Policies in the Slovak Republic and was updated in February 2016. [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/authorities/slovakia\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/slovakia_en). Accessed 19 March 2019.

<sup>6</sup>Ministry of Interior of the Slovak Republic. Residence of an Alien. <https://www.minv.sk/?reporting-residence>. Accessed 10 February 2018.

districts with registered unemployment rate lower than 5%. The list with ongoing labor shortages for districts concerned was elaborated and is updated and valid for limited time period. The approval of proposed measures is extended in 2018 and 2019.

## 25.2 Migration and Social Protection in the Slovak Republic

### 25.2.1 *Unemployment*

The unemployment benefit is a contributory benefit provided from the unemployment insurance (there is no special unemployment assistance scheme in Slovakia). The benefit is granted to unemployed individuals who have paid unemployment insurance contributions for at least two of the four years preceding their registration as jobseekers. The character of the employment or the reasons for its finalisation does not affect the entitlement to the unemployment benefit, its amount or the duration of payment. Unemployment benefit is paid for maximum six months. Provided that all eligibility criteria are met, the beneficiary will receive an unemployment benefit equal to 50% of the daily assessment basis. The unemployment benefit is provided by SIA and communication with local OLSAF regarding registration and availability for work is very important. Beneficiaries lose the right for unemployment benefit payment when they are removed from the jobseekers' register for non-cooperation with OLSAF, illegal work or the granting of an employment permit abroad. They can re-enter the jobseekers' register six months after the date of removal from the register.<sup>7</sup>

Foreigners residing in Slovakia are entitled to receive unemployment benefits under the same conditions as national residents. EU foreigners also need to register with the Department of Foreign Police. According to EU regulations, if a person who receives an unemployment benefit under the legislation of the Slovak Republic moves to another EU country to seek for a job, he/she shall retain the unemployment benefit entitlement if before leaving, is registered in the jobseeker's list for at least four weeks. Another condition is that the person asks to be registered with the employment services of the EU country in which he/she is seeking job within seven days. The insurance system is based on contributions paid by insured persons independently of their nationality. While receiving unemployment benefits, nationals and foreigners may leave Slovakia temporarily after communicating their stay abroad to OLSAF and SIA. Nationals residing in non-EU countries cannot access unemployment benefits or employment services from Slovakia.

As for the bilateral social security agreements signed with the three largest countries of origin of foreigners in Slovakia and the three largest countries of destination

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<sup>7</sup>Central Office of Labour, Social Affairs and Family. Employment Services. [http://www.upsvar.sk/sluzby-zamestnanosti.html?page\\_id=213](http://www.upsvar.sk/sluzby-zamestnanosti.html?page_id=213). Accessed 10 February 2018.

of Slovak nationals abroad, it is worth mentioning that the agreements with Ukraine, Australia, the United States of America (USA), and Canada do not cover unemployment benefits. However, the agreements with Serbia and the Union of Soviet Socialist Republics allow for an aggregation of insurance periods and ensure equal treatment.<sup>8</sup>

### **25.2.2 *Health Care***

All persons who have permanent residence in Slovakia or are self-employed or employed in Slovakia although they do not have permanent residence can access the healthcare system based on their insurance. The access to the health care system is granted once individuals present their health insurance card. Everyone with public health insurance has a national insurance card or the European health insurance card. Healthcare benefits are provided by medical services providers attached to the health insurance funds. This universal healthcare scheme is funded by compulsory contributions and state subsidies. In some cases, co-payments are required from insured individuals. Everyone has the right to emergency healthcare provided by a physician or a healthcare facility provider of their choice, regardless of whether they have public health insurance or not. However, the hospital or the physician has the right to demand the direct payment of incurred costs from patients. EU nationals and non-EU foreigners with permanent residence enjoy equal treatment with Slovak nationals as regards to the right to access healthcare (provided they are insured). In the case of EU foreigners, the principle of coordination of social security systems set out in the EU regulations in the field of healthcare applies.

Cash benefits in case of sickness are granted to nationals and foreigners living in Slovakia, who are temporarily incapacitated for work due to an illness or injury, have sickness insurance as employees or self-employed or are voluntarily insured in case of sickness. Self-employed individuals can access sickness cash benefits if they are compulsory insured and paid insurance contributions for the last five years. Individuals who are voluntarily insured can claim sickness benefits if they have been insured for 270 days in the last two years. The sickness benefit amount is determined based on income and it is paid by the employer during the first 10 days and afterwards by SIA. The benefit is paid for a maximum of 52 weeks. Resident EU and non-EU foreigners can access sickness cash benefits under the same eligibility conditions as national residents. The access to sickness cash benefits for nationals living in non-EU countries is limited, as they risk not to obtain the required insurance period for entitlement. Citizens living in other EU countries enjoy equal treatment with nationals of those countries. Nationals residing abroad have to meet the

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<sup>8</sup> Ministry of Labour, Social Affairs and Family of the Slovak Republic. Bilateral agreements on social security. [http://www.employment.gov.sk/sk/ministerstvo/medzinarodna-spolupraca/europska-unia/zmlu\\_vy-socialnom-zabezpeceni/](http://www.employment.gov.sk/sk/ministerstvo/medzinarodna-spolupraca/europska-unia/zmlu_vy-socialnom-zabezpeceni/). Accessed 10 February 2018.

same conditions as resident citizens for entitlement to sickness cash benefit in accordance with the Slovak legislation.

As for invalidity benefits, an invalidity pension is granted to insured individuals who are unable to engage in gainful activity in the long term as a result of unfavourable health conditions. The law considers as disabled any person whose health is chronically impaired, resulting in a permanent loss of working capacity of at least 40%, whereas full invalidity is defined as the loss of working capacity for more than 70%. The invalidity pension amount is the same as for an old-age pension, it only differs in the degree of disability (between 41% and 70%). The amount of the disability pension is based on the period of insurance. There are no restrictions regarding the export of invalidity benefits and beneficiaries may leave Slovakia while receiving an invalidity pension. EU and non-EU foreigners can receive an invalidity pension from Slovakia under the same eligibility conditions as national residents. Nationals residing in other EU countries have to meet the same conditions for entitlement to invalidity insurance benefit as citizens residing in Slovakia. In the case of nationals living in non-EU countries, their access to invalidity benefits from Slovakia is limited due to the risk of not meeting the necessary requirements regarding years of insurance.

In terms of coverage of healthcare in social security agreements, the agreement with Ukraine does not cover healthcare, but it does cover invalidity and sickness cash benefits. The agreements with Serbia and the Union of Soviet Socialist Republics offer access to healthcare, invalidity and sickness cash benefits. The agreements with the USA and Canada offer only access to invalidity pensions, whereas the agreement with Australia does not cover any of these health-related benefits.

### **25.2.3 *Pensions***

An insured person is entitled to an old-age pension under the mandatory social insurance system if he/she has at least 15 years of insurance and reached the retirement age of 62.<sup>9</sup> Mandatory and voluntary periods of affiliation count equally as insurance periods. Periods of exemption from payment of pension insurance contributions for one of the reasons accepted by the social legislation (e.g. temporary incapacity, maternity leave, the first 10 days of caring for a family member, etc.) are also taken into account. The Slovak legislation does not prohibit old-age pensioners from engaging in gainful employment. There is no public non-contributory pension scheme in the country.

EU foreigners can enjoy equal treatment with Slovak nationals in terms of access to an old-age pension. Non-EU foreigners enjoy equal treatment with Slovak

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<sup>9</sup> Ministry of Labour, Social Affairs and Family of the Slovak Republic. Social Insurance and Pension Scheme. <http://www.employment.gov.sk/sk/socialne-poistenie-dochodkovy-system/>. Accessed 15 March 2018.

nationals only if they originate from a country that has signed a bilateral social security agreement with Slovakia covering old-age pensions. Those receiving a pension from Slovakia may live abroad. Non-resident nationals are required to meet the same conditions for entitlement to an old-age pension as citizens residing in Slovakia.

The social security agreements with Ukraine, the Union of Soviet Socialist Republics, Serbia, the USA, Australia and Canada cover access to old-age pensions by providing for aggregation of insurance periods and equal treatment.

#### **25.2.4 Family Benefits**

There are several types of family-related benefits in Slovakia. The maternity benefit is a benefit from compulsory sickness insurance scheme for employees and self-employed.<sup>10</sup> The amount of maternity benefit depends on beneficiary's income. There is no specific scheme for paternity benefits, but fathers may also receive the maternity benefit. Family benefits are non-contributory benefits provided from the State's social support scheme and financed from general taxation. Their amount does not depend on the income of the beneficiary or the child's age. The child benefit is paid to parents independently if they are employed, self-employed or unemployed. The parental allowance is paid in two levels. The amount depends on whether prior to applying the beneficiary was paid maternity benefit. EU citizens and nationals of non-EU countries that have signed bilateral agreements with Slovakia covering access to maternity and family benefits have the same rights with regard to maternity and family benefits as nationals of Slovakia.

The maternity benefit is granted to all insured women who have paid 270 days of contributions in the last two years. The maternity leave lasts 34 weeks (37 weeks for single mothers and 43 weeks for multiple births). The maternity leave cannot be less than 14 weeks and must include the first six weeks after childbirth. The benefit is paid by SIA through the social insurance scheme for employees, the self-employed and voluntarily insured persons. EU and non-EU foreigners living in Slovakia enjoy equal treatment with Slovak nationals in terms of accessing the maternity benefit. Nationals residing in other EU countries have to meet the same conditions for entitlement to maternity benefit as citizens residing in Slovakia. Nationals residing in non-EU countries have limited access to maternity benefit (no aggregation).

The parental allowance<sup>11</sup> is paid to parents for the education and maintenance of children under the age of three (up to the age of six, in case of long-term unfavourable health conditions of a child). This is a two levels flat-rate benefit for all residents with children. Parents can work full time or part time while receiving the

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<sup>10</sup>Ministry of Labour, Social Affairs and Family of the Slovak Republic. Family and Social Assistance. <http://www.employment.gov.sk/sk/rodina-socialna-pomoc/>. Accessed 15 March 2018.

<sup>11</sup>Central Office of Labour, Social Affairs and Family. Social Affairs and Family. [http://www.ups-var.sk/socialne-veci-a-rodina-2.html?page\\_id=237](http://www.ups-var.sk/socialne-veci-a-rodina-2.html?page_id=237). Accessed 10 February 2018.

parental allowance. Eligible groups for parental allowance are residents or persons temporary staying in Slovakia who are parents, adoptive parents, are exercising substitute care, or are the spouse of the child's parent and sharing the same household. The amount of the parental allowance depends on the beneficiary's economic status. All EU and non-EU foreign residents enjoy equal treatment with nationals regarding entitlement to parental allowance. Nationals residing abroad may also receive this allowance from Slovakia if they meet the same conditions for entitlement as resident nationals.

Finally, the child benefit is paid to anyone providing for the education and maintenance of a dependent child. The entitled person must be permanent or temporary resident in Slovakia. Child benefit is a flat-rate benefit paid monthly for each dependent child until the end of compulsory school, 16 years, maximum up to 25 years. All EU and non-EU foreigners residing in Slovakia have access to the child benefit under the same conditions as national residents. To receive this benefit from Slovakia, nationals residing abroad have to meet the same eligibility conditions as national residents.

The social security agreements with Ukraine, the Union of Soviet Socialist Republics and Serbia offer access to the maternity insurance benefit to the nationals of these countries residing in Slovakia. However, the agreement with Ukraine does not cover access to the parental allowance and child benefits, whereas the agreements with the USA, Canada and Australia do not cover family-related benefits.

### ***25.2.5 Guaranteed Minimum Resources***

In Slovakia, the assistance in material need is a universal, non-contributory scheme financed by taxation, whose aim is to ensure a minimum income for those unable to maintain their basic living conditions. The assistance is granted on the basis of a subjective right (non-discretionary) as a means-tested benefit provided to persons residing in Slovakia who are in a situation of material need, i.e. when their income is lower than the subsistence minimum and they cannot secure an income themselves. The amount received varies according to the family composition. EU nationals and non-EU citizens are entitled to stay in Slovakia for more than three months if they have sufficient financial means so that they do not become a burden for the social assistance system. Non-resident citizens do not have access to this benefit from Slovakia. The social security agreements with Ukraine, Serbia, the USA, Canada, and Australia do not cover the area of social assistance benefits. However, the agreement with the Union of Soviet Socialist Republics offers access to the benefits from the material need assistance system to the nationals of this country residing in Slovakia.

### 25.3 Conclusions

In the Slovak Republic, the basic legal framework guaranteeing citizens' social rights is the Slovak Constitution which enshrines a number of social rights and social assistance. Every citizen in a socially disadvantaged situation has the right to such assistance to ensure basic living conditions. The social assistance benefits and the state social support system are pillars for combating social exclusion and social inequalities. The system applies the principle of solidarity with those who are in specific situations heavily relying on certain form of help and have also strong merit component and personal participation especially in the field of social insurance.

As shown in this chapter, the Slovak welfare system is based on social and health insurance, state social support – in principle, financial support for families with children and social assistance, in particular, material need assistance, allowances for compensation of social consequences of severe health disability and social services. The social protection system is based on aggregation of insurance periods, as well as the principles of equal treatment and protection against discrimination on grounds of nationality.

Social insurance benefits depend on the length of payment and the amount of social security contributions. The social insurance system is open for all insured individuals regardless of their nationality and it covers sickness, maternity, paternity, unemployment and invalidity benefits, as well as old-age pensions, survivors' benefits and benefits for accidents at work and occupational diseases. The health-care insurance system is based on the principle of solidarity even though in some cases, co-payments are required. The benefits within the state social support system are also provided to all persons regardless of their nationality. Currently, the state social support system includes the child benefit and supplement, the parental and childcare allowance, as well as birth grants. As for social assistance, this scheme is defined in Slovakia as the last safety net for those who are not able to ensure their living standards by themselves. Measures in the social assistance areas reflect specific national conditions and are fit and oriented to specific groups of beneficiaries. In this specific policy area, Slovakia allowed to introduce provisions that can limit the access to social assistance benefits of EU or non-EU foreigners. Furthermore, the social assistance area is not generally covered by bilateral social security agreements and not available to non-resident nationals.

The accession of the Slovak Republic to the European Union has had a significant impact on the country's economic policy and social security system. The EU membership also led to new challenges in terms of how to adapt the domestic social protection system to the free movement of the persons guaranteed in the EU. The legal conditions defined in the national legislation and the principle of equal treatment derived from the European social security coordination and bilateral agreements are applied for all beneficiaries or persons concerned in Slovakia. The coordination rules ensure that all EU foreigners and their family members enjoy equal treatment as regards to the access to social security benefits in Slovakia. On the other hand, nationals residing abroad in countries not covered by bilateral agreements with Slovakia often may have limited or no access to social protection from Slovakia.

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# Chapter 26

## Migrants' Access to Social Protection in Slovenia



Grega Strban and Luka Mišič

### 26.1 Overview of the Welfare System and Main Migration Features in Slovenia

This chapter discusses the key characteristics of the Slovenian welfare system grounded in the continental archetype of corporatist, contribution-funded<sup>1</sup> Bismarckian social insurance, reflecting the country's Austro-Hungarian heritage, with a subsidiary tax-funded social assistance scheme firmly in place. The social security (insurance) scheme is grounded in the notion of gainful employment, therefore as a rule guaranteeing social protection regardless of one's nationality or residence status. Access to the labour market, the main gateway to social insurance inclusion or coverage, can however be limited. The social assistance scheme is based on the notion of communal or long-term territorial affiliation (Slovenian citizenship, permanent residence or permanent residence permit for foreigners).

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<sup>1</sup> All branches of social insurance are financed by contributions paid by the employees and the employers. All employees pay the same amount of contributions (in proportion to their wages/salaries), regardless of type of employment (e.g. wage earners, civil servants). The state budget covers the difference between the expenses and revenue of individual social insurance carriers. The financing of social insurance is regulated by the Social Security Contributions Act (*Zakon o prisp-evkih za socialno varnost – ZPSV*), Official Gazette of the RS, No. 5/96, last amended in 2014, with special provisions found in sectoral legislation.

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### 26.1.1 Main Characteristics of the National Social Security System

Article 2 of the Constitution of the Republic of Slovenia<sup>2</sup> establishes Slovenia as a state governed by the rule of law and a social state (see also Strban 2017). The social state principle is considered a binding legal principle in regard to the rule-making, decision-making and administrative or executive powers of state bodies. The inclusion of both constitutional principles in a single provision establishes Slovenia as a normative social state (Strban 2012a/1). All other articles of the Constitution concerning social security originate from the social state principle (Kresal et al. 2016).

Article 50 of the Constitution stipulates the right to social security, although the constitutional content of the right is difficult to determine (Kresal et al. 2016, 28):

- Citizens have the right to social security, including the right to a pension, under conditions provided by the law.
- The state shall regulate compulsory health, pension, disability and other social insurance, and shall ensure its proper functioning.
- Special protection in accordance with the law shall be guaranteed to war veterans and victims of war.

The content of the right to social security is rather open, with possibly no direct correlation between the constitutional provisions and concrete rights stemming from the social security system. Therefore, the right has to be further determined fore and foremost by the general legislator, bound to stipulate individual rights and obligations of insured persons and other beneficiaries (Strban 2016a/1).

From Article 50, also taking into account the case-law of the Slovenian Constitutional Court, several relevant conclusions can be derived. First, according to the plain meaning rule, only Slovenian citizens enjoy the right to social security. However, the provision ought to be interpreted in line with international human rights documents and social security conventions. The theological interpretation significantly broadens the scope of the provision. The Slovenian social security system, grounded in the notion of professional, functionally decentralized social insurance (Strban and Mišić 2018; Mišić 2019), as a rule guarantees coverage to all gainfully employed persons in the territory of Slovenia.

Second, there exists no *numerus clausus* of social insurance branches, according to the Constitution. The Slovenian social insurance system is established in regards to the traditional social risks stipulated in the ILO Convention No. 102, and consists of compulsory health, pension, disability, unemployment, and parental insurance, with the legislator authorized by the Constitution to regulate additional branches, e.g. long-term care insurance. The introduction of a new branch of insurance does not require for a Constitutional amendment. The system currently lacks a structured, unified approach to long-term care and personal assistance both in legislation and

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<sup>2</sup> Constitution of the Republic of Slovenia (*Ustava Republike Slovenije – URS*) Official Gazette of the RS, No. 33/91-I, last amended in 2016.

practice, with benefits in kind and cash dispersed between different branches of social insurance and the social assistance scheme (Strban 2012b/2, 2018a/1).<sup>3</sup>

Third, the Constitution explicitly refers to social and not to other types of insurance or social security schemes. Any substitution of professional insurance with a residence-based scheme or private insurance would therefore require a Constitutional amendment. Compulsory health insurance, providing coverage to almost all Slovenian nationals and permanent residents, has however transgressed its professional roots, mimicking in regards to the personal scope of application (coverage) a residence-based scheme. As other branches of social insurance, health insurance is however implemented in a functionally decentralized system, with secondary legislative, financing and administrative functions reserved primarily for the social insurance carrier. Articles 51 and 52 of the Constitution stipulate the right to health care (from public funds) and rights of disabled persons. Special protection is awarded to family and children in accordance with Article 53 and 56.

### ***26.1.2 Migration History and Key Policy Developments***

Recent immigration flows can be divided into four time periods. First, the period until 1991 with predominant immigration of migrant workers from other Yugoslav countries. Second, the period from the early until late 1990s with mass immigration of refugees from Bosnia and Herzegovina. Third, the period between 1999 and 2004 with mass irregular immigration, and fourth, the period after 2004, when Slovenia became a EU Member State (Kogovšek Šalamon 2018). As highlighted in the 2009 Annual Report on Migration and International Protection Statistics, Slovenia was for the first time faced with migration policy development and implementation in 1991, after it has reached independence. From 2002, the country witnessed a steady increase in net migration from abroad. In 2002, Slovenia received 9134 immigrants from abroad, with 7269 emigrants leaving the country. In 2004, the numbers increased to 10,171 and 8269, reaching 30,296 immigrants (of whom 27,393 were foreigners and 2903 Slovenian citizens) and 18,788 emigrants in 2009. The emigration peak (6500 more emigrants than in 2008) can be ascribed to the developing economic crisis.<sup>4</sup>

In 2009, most immigrants were citizens of Bosnia and Herzegovina (47%), followed by citizens of Kosovo (13,1%), before 2009 considered as citizens of Serbia, leading to a decrease in the number of immigrants from Serbia (2900 in 2009). 1881 individuals immigrated from other EU Member States, with Bulgaria, Italy and

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<sup>3</sup> Personal Assistance Act (*Zakon o osebni asistenci* – ZOA), Official Gazette RS, No. 10/2017, last amended in 2018, does not regulate long-term care insurance.

<sup>4</sup> Concerning the emigration of Slovenian nationals, it should be noted that relatively large Slovenian communities exist in the US, in Argentina and Australia, with concluded bilateral social security agreements following a once lively current of emigration. Slovenia has also concluded a social security agreement with Canada and the US.

Slovakia representing top three EU countries of origin. In 2009, 1442 individuals arrived from the neighbouring Croatia, then not yet an EU Member State. In 2010, the population of Slovenia (usual residence criteria) reached 2,046,976 persons, with 4626 EU nationals, 16,940 persons from candidate countries, 60,518 from third countries and only 92 from EFTA member countries (2009 Annual Report on Migration and International Protection Statistics).

A similar trend can be observed throughout the following years, with citizens of Bosnia and Herzegovina (4369; 4861; 6330), Serbia (1331; 1874; 2399) and Kosovo (1555; 1612; 1, 397) representing top three nationalities in regard to first residence permits issued between 2014 and 2016, followed by FYROM and Russia. The majority of residence permits were issued on grounds of gainful employment (European Migration Network 2017). Economically conditioned migration to Slovenia is by nature followed by family reunification.

According to the report issued by the national Migration Office, on the 31st of December 2017, 80,482 permanent residence permits were issued to third-country nationals, whilst 11,150 permits were issued to EU, EEA and Swiss nationals. 43,984 permanent residence permits were issued to citizens of Bosnia and Herzegovina (22,721 temporary residence permits issued), 13,530 to citizens of Kosovo (4457 temporary residence permits issued), 7750 to citizens of Serbia (7443 temporary residence issued), followed by FYROM (9477; 3449), Russia (858; 2165) and Ukraine (1216; 1116). The majority of EU nationals holding a permanent or temporary residence permit in 2017 originated from Croatia, Bulgaria, Italy, Germany, Hungary, Slovakia, Romania, the UK, Austria and Poland. 11,387 permits were held by Croatian, 4670 by Bulgarian, and 3094 by Italian citizens.

Hence, for the past 15 years, the majority of persons who migrated to Slovenia originated from Bosnia and Herzegovina, Serbia, Kosovo, Macedonia and Croatia. In simplified terms, the reasons for the ongoing migration inflows, of course going back further than the analysed 15 years, can be traced back to the countries' common Yugoslav history, tradition and cultural heritage, dating back to the disintegration of the Austro-Hungarian Empire after the First World War. It is as a rule enhanced by common language group affiliation or linguistic similarities (Slovene, Serbian, Croatian), traditional communities of nationals from former Yugoslav countries and their Slovenian descendants residing in Slovenia, and the sheer proximity of countries, with no major geographical barriers to separate the once united nations.

Migration inflows are (also historically) driven by (male) jobseekers, seeking gainful employment in the by far most developed Balkan country.<sup>5</sup> The inflow is however not only of key importance for migrant (and posted) workers and their families, coming from socially and economically less developed countries in Slovenia's South-Eastern proximity, but also for the somewhat rigid Slovenian labour market, commonly experiencing shortages of workers in the construction

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<sup>5</sup> In 2017, Slovenia reached 85% of the average GDP per capita in PPS (purchasing power standard) in (then) EU 28, whilst Croatia only reached 62%. Bosnia reached an average of 32%, Serbia of 36%, FYROM of 36% and Montenegro an average of 46%. Source: Eurostat.

sector, particular branches of the industry or particular professionals, e.g. graduate nurses. The labour market is also strongly affected by posting. High absolute and even higher relative numbers (in regard to the number of inhabitants) of workers posted from Slovenia to other EU Member States (see De Wispelaere and Pacolet 2017), can be considered one of its key features, to which large numbers of frontier workers can be added (e.g. daily migrants working in Austria or Italy). According to the Statistical Office's data for 2018,<sup>6</sup> Slovenia's economy (import and export of goods) is most strongly interlinked with the economies of EU Member States, with EU 28 export making up 76,5% of all export and EU 28 import making up 79,8% of all import.

## 26.2 Migration and Social Protection in Slovenia

In order to enjoy coverage in compulsory social insurance schemes, Slovenian citizenship or residence status is as a rule not required. It is a requirement for particular types of insured persons, e.g. social assistance recipients or persons insured on grounds of special provisions such as war veterans. The personal scope of application (coverage) applies to the active working population of Slovenia, i.e. persons gainfully employed in Slovenia (Kresal et al. 2016).

Gainful employment represents the core insurance basis in all social insurance branches, irrespective of one's nationality or residence status (permanent, temporary, registered, habitual or usual, factual residence, etc.). Article 8 of the Employment, Self-employment and Work of Foreigners Act<sup>7</sup> stipulates compulsory inclusion for foreigners in accordance with (general) provisions. Special conditions however apply to non-EU foreigners, who first have to obtain a working permit in order to exercise gainful employment leading to the *ex lege* conclusion of any compulsory social insurance,<sup>8</sup> a feature as a rule typical for every professional or employment-based type of insurance.

The single permit (single residence and work permit) allows third-country nationals to enter the Republic of Slovenia in order to search for residence and employment. The permit, for which persons apply at the administrative unit, diplomatic or consular office in their country of origin, requires an approval to the permit obtained from the Slovenian employment services. As a result of transposed EU Directives, it is granted in regard to employment, self-employment and work,

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<sup>6</sup> Statistical Office of the Republic of Slovenia. <https://www.stat.si/StatWeb/en/News/Index/7715>. Accessed 11 Feb 2019

<sup>7</sup> *Zakon o zaposlovanju, samozaposlovanju in delu tujcev – ZZSDT*, Official Gazette of the RS, No. 1/18.

<sup>8</sup> After compulsory social insurance has been *ex lege* concluded (pension and disability and unemployment insurance offer voluntary inclusion in regards to particular statuses) any limitations, such as the requirement to hold permanent residence in Slovenia in order the access benefits in cash or in kind, would present a breach of the right to private property.

posting, EU Blue Card, seasonal work, work performed by an agent, etc., with different conditions applying to different economic activities.

It is important to note that the transitional period, in which full access for Croatian workers (as EU nationals) to the labour market was not yet granted, has not been prolonged back in 2019. On grounds of bilateral agreements, access to the labour market is (administratively) facilitated for Bosnian and Serbian workers and Macedonian seasonal workers. No particular provisions apply for workers from Kosovo or Montenegro. Slovenia has also not yet concluded a bilateral social security agreement with Kosovo.

Free access to the labour market, accompanied by EU rules on social security coordination, is granted to EU, EEA and Swiss nationals. The tax-funded social assistance scheme however requires the existence of a relevant link between the beneficiary and the state or a sufficient level of one's societal integration, i.e. the fulfilment of permanent residence conditions (see also Mišić 2018).<sup>9</sup> In that sense, the Slovenian social security system fully mirrors the traditional distinction between employment (contribution) based social insurance and residence (tax) based social assistance schemes.

According to Article 33 of the Foreigners Act,<sup>10</sup> foreigners can obtain a residence permit if possessing sufficient means – income, income support, rights from social insurance, etc., are considered in regard to the threshold. Rights from public funds and family benefits are not considered when applying for the first residence permit (as a rule valid for 1 year). According to Article 52, permanent residency is possible after 5 years of continuous residence. Social assistance benefits can also be granted to persons obtaining a special legal status, such as international protection, who are not Slovenian nationals or permanent residents.

According to Article 25 of the Pension and Disability Insurance Act,<sup>11</sup> Slovenian nationals, employed abroad, enjoy the right of voluntary pension and invalidity insurance if they were insured or held permanent residence in Slovenia prior to emigration. They however only enjoy the right if they are not insured abroad or if they enjoy coverage but cannot export their benefits. In regard to cross-border healthcare, the Healthcare and Health Insurance Act<sup>12</sup> stipulates three distinct legal bases. Two follow EU regulation, one however presents a “purely national” provision, allowing for medical treatment of insured persons abroad and cost reimbursement when all possible means of treatment have been exhausted in Slovenia, whilst it is reasonable to expect an improvement of patient's health with treatment obtained abroad (see Article 44.a). According to Article 7, the state budget covers costs of “necessary” treatment (urgent medical treatment and treatment preventing

<sup>9</sup> According to Article 7 of Regulation (EU) 492/2011, equal treatment applies to workers, who are EU citizens.

<sup>10</sup> *Zakon o tujcih – Ztuj-2*, Official Gazette of the RS, No. 1/18, last amended in 2019.

<sup>11</sup> *Zakon o pokojninskem in invalidskem zavarovanju – ZPIZ-2*, Official Gazette of the RS, No. 96/12, last amended in 2020.

<sup>12</sup> *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju – ZZVZZ*, Official Gazette of the RS, No. 72/06, last amended in 2019.

deterioration of health) of foreigners and Slovene nationals residing abroad during their temporary stay or travel through the territory of Slovenia if no payment of services was possible. Moreover, Article 133 of the Rules on Compulsory Health Insurance<sup>13</sup> stipulates the right to cost reimbursement up to the average price of the service provided in Slovenia for insured persons obtaining necessary treatment in countries, where EU law does not apply, nor has Slovenia concluded a bilateral agreement with the country of provided treatment.

## 26.2.1 *Unemployment*

Unemployment insurance, regulated by the Labour Market Regulation Act,<sup>14</sup> is implemented by the Employment Service of Slovenia and comprises: (i) unemployment benefit, (ii) the right to compulsory social insurance contributions payment, and (iii) the right to pension and disability insurance contributions payment 1 year prior to the fulfilment of the minimum retirement conditions. Insurance is compulsory for all workers, regardless of their nationality or residence status. According to Article 6 of the Labour Market Regulation Act, stipulating equal treatment, same rights and obligations apply to Slovenian, EU, EEA and Swiss citizens.

According to Articles 59, 63, 8<sup>15</sup> and 64 of the Act, unemployment benefit is granted and paid under the following conditions: (i) the individual has to be insured for at least 10 months (9 months prior to the amendment in 2019) during the 24 months period prior to unemployment or – if younger than 30 – for at least 6 months during the same period; (ii) unemployment has to be involuntary and ought not to occur on grounds of worker's fault (Article 63); (iii) the individual has to possess working capacity, register with the employment services and be willing to accept suitable employment (Article 8) and (iv) (unless otherwise stipulated by an international legal act) resides in the Republic of Slovenia in order to avoid suspension of rights (Article 64).

In accordance with the bilateral social security agreements that Slovenia has concluded with the most relevant countries of origin of foreign residents, i.e. Bosnia and Herzegovina, Serbia, Croatia (now a Member State) and FYROM, mutual recognition of facts and calculation of periods is in place (see also Strban 2018b/2 for

<sup>13</sup> *Pravila obveznega zdravstvenega zavarovanja*, Official Gazette of the RS, No. 79/94, last amended in 2020.

<sup>14</sup> *Zakon o urejanju trga dela – ZUTD*, Official Gazette of the RS, No. 80/10, last amended in 2020.

<sup>15</sup> According to Paragraph 2 of Article 8 ZUTD, third-country nationals count as unemployed persons if they enjoy free entry to the Slovenian labour market, possess the single permit, the EU blue card, or temporary residency permit when having filed for an extension on grounds of employment or self-employment whilst being recipients of unemployment benefits. A third-country national has to – according to Article 8a ZUTD (introduced with the amendment in 2019) – showcase A1 level of Slovene language skills within 12 months of becoming registered with the unemployment office in Slovenia.

key principles commonly incorporated in social security agreements). Agreements, which are very similar to one another (in part even identical) however do not permit the export of unemployment benefits.<sup>16</sup>

Voluntarily insured persons enjoy same rights as compulsorily insured persons. The majority of voluntary insurance basis is however reserved for Slovenian citizens, e.g. nationals working abroad if they cannot claim benefits upon their return; spouses of nationals working abroad, who were employed or self-employed prior to departure, etc.

### **26.2.2 *Health Care***

Health insurance, regulated by the aforementioned Health Care and Health Insurance Act, is implemented by the Health Insurance Institute of Slovenia and comprises: (i) medical services at the primary, secondary and tertiary level, (ii) sickness cash benefit paid due to a private or occupational social risk realization, and (iii) travel expenses reimbursement. In case of long-term or permanent loss of working capacity, the insured person is transferred from the health to the pension and invalidity insurance scheme (Bubnov Škoberne and Strban 2010).

The benefits in-kind system is supplemented by private supplementary insurance for co-payments. Private insurance is open to every compulsorily insured person under equal conditions. The lump sum insurance premium is set regardless of one's income and risk level. Due to its claimed socially unjust nature, supplementary insurance has long been expected to become substituted with an earnings dependent public charge. An increase in contribution rates would however present the most straightforward and legally sound solution for an increase in available funds (Mišić and Strban 2017).

Social health insurance is compulsory for all employed and self-employed persons in Slovenia, employee-like persons and recipients of social security benefits. If not covered by any other insurance basis, two general clauses stipulate the insurance of all (i) permanent residents, who (are obliged to) pay their health insurance contributions, and (ii) national citizens and foreign permanent residents, who were granted the right to compulsory insurance contribution payment due to their low income. Derivative insurance of dependant family members is possible regardless of their nationality. Unless otherwise stipulated by an international agreement, permanent residence possessed by family members in Slovenia is however required.

In regard to social security coordination, concluded social security agreements as a rule also stipulate the condition of permanent residence, held by the family

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<sup>16</sup> Social security agreements, concluded with FYROM, Bosnia and Herzegovina, Serbia, Macedonia and Croatia, as a rule prohibit the export of the social assistance supplement, special assistance and attendance allowance and other means-tested benefits, invalidity and unemployment cash benefits, death grants and funeral expenses reimbursements.

member in territory of the other party, in order to receive medical services at the expense of the affiliated (country of origin) social insurance carrier. Article 15 of the Health Care and Health Insurance Act also lists the insurance base for family members of insured persons, affiliated with a foreign social insurance carrier, who possess permanent residence in Slovenia and are not derivatively insured at the foreign social insurance carrier. The provision however in the first place *de facto* refers to Slovenian nationals, who are dependent family members of persons working abroad.

Regarding compulsory insurance, all gainfully employed persons are treated equally, regardless of their nationality or residence status. Emergency treatment is universal and guaranteed regardless of one's insurance or other status. The social security agreements mentioned above, concluded with the most relevant countries of origin, establish a coordination mechanism in regard to both private and occupational social risks, with special provisions applying to posted workers, retirees and family members, thus facilitating freedom of movement between both parties to the agreement.

### **26.2.3 *Pensions***

Pension and invalidity insurance, regulated by the aforementioned Pension and Disability Insurance Act, is implemented by the Pension and Invalidity Insurance Institute of Slovenia. The first, repartition-based pension pillar comprises: (i) old-age pension, (ii) early pension, (iii) partial pension, (iv) invalidity pension, (v) widow's and widower's pension, (v) family pension, and (vi) assistance and attendance allowance. It is compulsory for all employed, self-employed and employee-like persons. Recipients of particular social security benefits (such as unemployment benefits) are also insured. Voluntary insurance is possible. The first pillar also consists of compulsory occupational insurance. The second pillar consists of voluntary individual and collective supplementary insurance, offering additional income protection in regards to the first pillar. The third pillar consists of private life insurance schemes.

As with other branches of what was considered professional insurance, equal treatment applies to all gainfully employed persons. Special conditions however apply to foreigners regarding access to particular benefits, e.g. parental allowance, whose recipients also enjoy coverage within the pension and invalidity insurance. At the same time, foreigners do not enjoy equal access to voluntary insurance – the general clause for the voluntary insurance stipulates the condition of permanent residence. According to Article 25, the possibility of voluntary insurance is granted to Slovenian nationals, but not foreigners working abroad, if they were insured in Slovenia prior to their departure or possessed permanent residence in Slovenia. Voluntary insurance on grounds of covering for the difference between part-time and full-time insurance is however possible regardless of one's citizenship or residence status, since it depends on one's occupation.

As in the case of health insurance, the above listed social security agreements, establish a coordination mechanism concerning old-age, invalidity and death, thus facilitating freedom of movement between both parties. The export of benefits, predominately pensions, is their key feature.

### 26.2.4 Family Benefits

The broadly defined category of family benefits can be divided in two categories: (i) parental insurance benefits and (ii) family benefits, including means-tested benefits and two lump sum benefits. Both categories are regulated jointly by the Parental Protection and Family Benefits Act.<sup>17</sup> The first part of the Act regulates the compulsory, contribution-funded social insurance scheme, consisting of maternity, paternity, and parental leave and benefits, and the right to part-time work due to child-care and contribution payment. The second part of the Act regulates means-tested lump sum benefits, provided within a tax-funded scheme, which however is not a social assistance scheme since it aims to cover the costs related to child-care and not necessarily to prevent poverty or social exclusion (Bubnov Škoberne and Strban 2010). The Act covers birth grant, child benefit, large family supplement, special child-care allowance for children requiring special care and partial compensation for the loss of income for parents providing for disabled children.

As with other branches of insurance, equal treatment applies to all gainfully employed persons. Recipients of particular social security benefits (e.g. unemployment benefits) are also insured. Voluntary insurance is, however, not possible.

Social insurance rights can be exercised regardless of one's citizenship or residence status. Every application is to be filed with the Social Work Centre competent in the territory of the insured person's permanent residence, temporary residence (if no permanent residence exists in Slovenia), the employer's headquarters (if no residence exists in Slovenia) or competent in regard to the child's place of birth. The rights to family benefits however require a particular link to exist between the parent, other person and/or child, and the state, i.e. the existence of permanent or common permanent residence, commonly complemented by the requirement of actual, factual residence, and temporary residence in Slovenia. The above-mentioned social security agreements include in their material scope: maternity leave (Croatia before joining the EU), maternity leave and child benefits (FYROM), maternity leave, paternity leave, parental leave (Serbia), and maternity leave, paternity leave, parental leave and child benefits (Bosnia and Herzegovina) (for an in-depth analysis, see also Strban 2016b/2).

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<sup>17</sup> *Zakon o starševskem varstvu in družinskih prejemkih – ZSDP-1*, Official Gazette of the Republic of Slovenia, No. 26/14, last amended in 2019.

### **26.2.5 *Guaranteed Minimum Resources***

The tax-funded and means-tested social assistance scheme aimed at preventing poverty and social exclusion, is regulated by several Acts.<sup>18</sup> The Social Assistance Benefits Act stipulates the following benefits: (i) monetary social assistance (minimum income benefit), (ii) extraordinary monetary social assistance and (iii) supplementary allowance (social assistance supplement). The beneficiaries can be: (i) Slovenian citizens with permanent residence in Slovenia, (ii) foreigners, possessing a permanent residence permit, which is, however, not required for EU workers, and (iii) persons granted international protection and their family members, exercising the right to family reunification. In addition, the Social Assistance Benefits Act stipulates that monetary social assistance and supplement are to be granted to all persons entitled on grounds of international legal acts, binding Slovenia. Social assistance benefits cannot be exported. Moreover, no social assistance benefits fall within the material scope of the bilateral social security agreements listed above.

## **26.3 Conclusions**

Contribution-funded compulsory social insurance schemes are based on the notion of gainful employment. All gainfully employed persons in Slovenia enjoy coverage irrespective of their citizenship or residence status. Free access to the labour market is enjoyed by Slovenian, EU, EEA and Swiss nationals. Other foreigners first have to obtain a single residence and work permit, which allows them to enter the country, search for residence and employment, and reside in Slovenia. Gainful employment as a rule leads to coverage within social security, whilst long-term territorial affiliation or citizenship as a rule leads to coverage within the means-tested social assistance scheme.

Bilateral agreements concluded with Bosnia and Herzegovina, Serbia and FYROM facilitate freedom of movement rights for (seasonal) workers who are nationals of one of the three countries, thereby enabling the historic migration flow to continue. Workers' mobility is by nature commonly followed by family reunification. Freedom of movement is also facilitated by bilateral social security agreements concluded with Croatia (now an EU Member State), Serbia, Bosnia and Herzegovina, Montenegro and FYROM, some of them EU Candidate Countries. As mentioned, Kosovo, also a relevant country of origin of foreigners residing in Slovenia, has been left out.

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<sup>18</sup> *Zakon o socialno varstvenih prejemkih – ZSVarPre*, Official Gazette of the RS, No. 61/10, last amended in 2018, the Exercise of Rights from Public Funds Act (*Zakon o uveljavljanju pravic iz javnih sredstev – ZUPJS*), Official Gazette of the RS, No. 62/10, last amended in 2019, and the Social Assistance Act (*Zakon o socialnem varstvu – ZSV*), Official Gazette of the RS, No. 3/07, last amended in 2019.

Regarding the export of pensions, social security agreements regulate the export of non-EU foreigners' benefits. If not stipulated otherwise, pensions and other social security (insurance) benefits ought not to be limited or in any way altered on grounds of the recipient residing in the territory of a party to the agreement. This however does not apply to unemployment and means-tested benefits. Means-tested or lump sum tax-funded family benefits require different types of residence conditions (permanent, registered, actual) to be fulfilled by one parent, both parents, the child, or the person caring for/raising the child.

EU-foreigners' and national citizens' social security benefits are exported without limitations. Whenever general export is enabled for Slovenian citizens, it ought to be enabled for all EU citizens. It can be concluded that the Slovenian legislation facilitates freedom of movement rights for migrant workers entering Slovenia from former Yugoslav republics by means of concluded bilateral agreements and protocols to agreements that enable easier labour market access. At the same time, bilateral social security agreements, grounded in mutual recognition of facts and calculation of periods, offer a substantive level of social protection to migrant workers and their family members. Social assistance however remains available under the permanent residence condition, possibly fulfilled after 5 years of continuous residence. Regarding Croatia, one of the key countries of origin, EU rules on social security coordination apply.

As mentioned, the by far most relevant migration flow mirrors the common historical background of Slovenia and other former Yugoslav nations, which is only intensified by the countries' proximity. The migration flow in the opposite direction traditionally remains weak due to much lower wages and living standard in the South-Eastern Balkans. It predominantly consists of short-term stays of tourists. It however seems that Slovenia does not represent a tempting host country for other EU and third-country nationals, a fact possibly ascribed to its relatively small economy and/or labour market, with the country still falling short of the EU 28 average in GDP per capita in PPS. Other factors- such as the unfamiliar and complex Slavic language and the proximity of economically more developed countries such as Austria, Germany and (Northern) Italy- can also help explaining this situation.

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# Chapter 27

## Migrants' Access to Social Protection in Spain



Francisco Javier Moreno-Fuentes

### 27.1 Overview of the Welfare System and Main Migration Features in Spain

#### 27.1.1 *Main Characteristics of the Spanish Social Security System*

The Spanish social protection system is generally categorised as belonging to the “Mediterranean” type (Ferrera 1996), and it occupies an intermediary position on the “decommodification” scale (Esping-Andersen 1990). The main characteristics of this system are the combination of social insurance programs (typical of the “conservative-corporatist” model) with universalist schemes (of the “social-democratic” type), its strong reliance on families for the provision of care (for children, the disable or the elderly), the high level of decentralization in the design, management and, financing of social protection schemes, as well as the relatively low level of social expenditure compared to the rest of Western European countries.

Today's Spanish welfare state was founded upon the inadequate corporatist system developed under Franco's authoritarian regime (a variant of the conservative-corporatist model in place in continental Europe). From the late 1970s, the democratically elected governments did not radically restructure the pre-existing social protection programmes, but rather attempted to achieve a higher degree of universalization and coverage for these same programmes (Moreno 2002).

Just like in other Southern European countries, and up to recently, public authorities practically took for granted the self-sufficiency of households regarding the provision of care and material support for their members, so families remained a

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central part of social policy in Spain (Flaquer 2000). This situation, which reinforced the exploitation of female members of the family, faces the challenge of the growing incorporation of women into the labour market, as well as the gradual decline in expectations of solidarity within the family.

Also characteristic of the Spanish welfare regime is the high degree of decentralization of social policy decision-making and programme management. With the exceptions of pensions and unemployment insurance, which remain in the hands of the central government, social protection schemes are fundamentally run by the autonomous regional governments and by municipal authorities. In this context, the responsibility of the central government lies in the development of basic legislation applicable nationwide, as well as in specific financial transfers of a conditional nature to cover a share of the costs of certain social protection programmes. The autonomous communities have, as a result, emerged as central political actors in the development of systems of social assistance, care, education, and social services. This means that social rights end up taking significantly distinct forms within different regions, depending on the priorities established by the autonomous governments, as well as on the resources that each region may mobilize to finance such policies (Marí-Klose and Moreno-Fuentes 2013).

The Spanish welfare state is also characterized by its relatively low level of social spending, among the lowest of all Western European countries. A detailed analysis of the disaggregated data on social spending shows that a relatively significant financial effort is put into paying for pensions (as in the rest of Southern Europe). Similarly, unemployment benefits absorb a significant fraction of the financial resources dedicated to social protection due to the particular sensitivity of the Spanish labour market to the fluctuations of the economic cycle, while the provision of housing, or schemes to support families are extremely weak.

### ***27.1.2 Migration History and Key Policy Developments***

Spain, a traditional country of emigration (at the times of the colonial expansion, to the Americas, later on as economic migrants left for Latin America, Africa and some of the most developed Western European countries), became a net receiver of migrants over the last two decades. This shift of position in the international migration system was determined by the large economic and political changes experienced by Spain over this period. While in 1999 the foreign population represented roughly 2% of the Spanish population, by 2011 foreigners constituted more than 12% of the Census (more than 5.7 million persons), the second highest number of foreigners in the European Union (EU-27) after Germany. This figure included both EU nationals residing in Spain (both as retirees and students, and as workers, notably from the new Eastern European member states), and economic migrants from Latin America, North-Africa, Eastern Europe and Asia. The relatively rapid annual growth in the number of foreign residents of the late 1990s accelerated after 2000, with average annual increases superior to 40%. Both the scale and the speed at

which this immigration trend occurred were quite remarkable. Since 2000, the pace of foreigners settling in Spain accelerated sharply, above all in the years 2000–2005, period during which the annual intensity of settlement reached 16.8 foreigners per 1000 inhabitants (Izquierdo 2006). Starting in 2005, the volume of migration flows to Spain decreased significantly, but remained, nevertheless, higher than the European average. As a result of this process between 1990 and 2005 Spain became one of the primary destination countries for immigration in the world, joining countries with a long tradition as receivers of migration flows.

Between 1996 and 2007, the Spanish economy created almost 8 million jobs, expanding from 12.6 million employed in 1996, to 20.5 million in the second quarter of 2007. Many of those jobs were occupied by foreigners, which contributed to the introduction of flexibility in the Spanish labour market (in terms of hiring, working conditions, salaries and geographic and functional mobility), particularly in certain sectors and employment niches. While at the end of 2001, around 600,000 foreign workers were affiliated to the social security system (a little less than 4% of the total workforce), by the end of 2007 they were almost 2 million (10.3% of the total number of affiliates). After this peak, the economic crisis led to the destruction of more than 2 million jobs, many of them occupied by immigrant workers. Nevertheless, and despite the economic crisis that affected foreign workers with particular intensity, the number of foreigners affiliated to the social security system continued being close to 1.9 million people (around 10.5% of affiliated workers) at the beginning of 2010.

The main regulatory framework for those migration flows has been the 4/2000 Spanish Immigration Law, which establishes the main principles under which foreigners can enter and settle in the country, while defining the basic set of rights and obligations of those foreign residents. This regulation, amended in different aspects by the successive governments, aims at striking a complex balance between a strict logic of border closure, and the need to respond to the demands from different sectors of the economy favourable to the arrival of foreign workers, as well as to the requirements of the migratory projects of those foreigners settled in Spain.

The economic crisis experienced by Spain between 2008 and 2013 made migration flows affecting this country significantly more complex. While immigration and emigration coexisted, immigration flows considerably decreased, and out-migration significantly expanded. At the same time, the profiles of people coming to Spain and those leaving the country became more heterogeneous, combining foreign immigrants, naturalised foreigners, and native-born Spanish citizens in multiple manners (González-Ferrer and Moreno Fuentes 2017). This re-emergence of emigration flows was perceived as an indicator of Spain's structural weaknesses. The socio-economic shock produced by the crisis pushed a large spectrum of Spanish workers to consider emigration as a way out of the situation of unemployment, and/or sub-employment. The incentives for migrating were there for a higher number of segments of the Spanish population (including some of the immigrants that had arrived in Spain in previous years, many of which had already acquired Spanish citizenship), producing a relatively large-scale out-migration flow. This flow was directed towards other EU countries, but also towards the countries of

origin of some of the groups that had arrived in previous years. The position currently occupied by Spain in the World Migration System (Bakewell 2012) has become more complex, with significant out-migration flows combined with immigration (fundamentally through family reunification, but also some labour migration), with a net balance that is difficult to ascertain.

## 27.2 Migration and Social Protection in Spain

In basic terms, foreigners can access Spanish social protection schemes through a mix of two basic entitlement patterns: their participation in the labour market (for programs based on social insurance), and their residence in Spanish territory (for schemes based on a universalistic logic).

Access to welfare schemes included under the umbrella of the Social Security system (unemployment benefits and assistance, sickness and disability benefits, retirement pensions, as well as some family benefits) is essentially based on a contributory logic, and the basic eligibility criteria is having previously contributed to the system for a certain period via labor market participation. Nationality, *per se*, does not play any role in the definition of entitlements to benefits from the National Social Security Institute (*Instituto Nacional de la Seguridad Social*, INSS). Autochthonous workers and regularly employed foreign workers with valid work permits can access these schemes in equal terms.

The significant role of the underground economy in the Spanish productive system conditions access to social insurance programs for the most precarious categories of workers.<sup>1</sup> Participation in informal sectors of the economy is the only possibility to hold a job for undocumented migrants. Autochthonous and immigrant workers with working permits who cannot find a job in the formal economy may also have to rely on the underground economy to find employment. This situation prevents workers from accessing the protection of contributory social insurance schemes.

A second group of welfare policies, such as healthcare, education, social assistance and personal social services, operate under a residence criterion. For these programs, any person registered as a resident in a Spanish municipality is eligible, regardless of their nationality, or the regularity of their residence status. Access to these social protection programs is grounded on the eligibility criteria established by the 4/2000 Spanish Immigration Law, which states the universality of access to education and healthcare in Spain without any concern for the legal status of the

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<sup>1</sup> By their very nature, the precise size of economic activities outside of the State's regulation and taxation is unknown. Recent estimates quantify the average underground economy in Spain in the period 2004–2015 to have been around 24.5% of the GDP (Medina and Schneider 2018). The underground economic is concentrated in the construction, agriculture and particularly in the services sector (cleaning, domestic service, and care tasks) where migrant labor has their main labor market niches (Baldwin-Edwards and Arango 1999).

person. This Law also established that legal foreign residents are entitled to the same social assistance services and benefits than Spaniards, while immigrants in an irregular administrative situation can access a limited package of social assistance and personal social services benefits. Due to the strongly decentralized character of the Spanish welfare regime, each autonomous community has a large room of maneuver for deciding its own policy regarding access of undocumented migrants to social services in their territory. Thus, in some regions requirements to access mainstreaming social services schemes are relatively flexible, while in other semi-public targeted schemes, generally run by third-sector organisations, have been established to attend undocumented immigrants.

The dual nature of the welfare system conditions to some extent the eligibility of Spanish nationals residing abroad to the different social protection schemes as well. In general terms, those domains of social protection based on a social assistance logic, or on a universalistic entitlement linked to residence in the country, exclude those nationals who do not reside in Spain. On the other hand, some programs based on a social insurance logic (notably pensions, although not unemployment benefits) grant entitlements to Spanish nationals abroad to the extent that they contributed to them previously to leaving the country.

The economic crisis started in 2008 opened a window of opportunity for the introduction of austerity policies, and for a significant reduction of social rights in Spain (Pavolini et al. 2015). Although the economy gradually recovered its pulse over the last years, and with it, the public finances necessary to provide public services, welfare programs and entitlements were significantly affected by fiscal consolidation measures.

### **27.2.1 *Unemployment***

The social security system constitutes the core and foundation of the Spanish welfare state. Financed through the contributions of employers and employees, it is comprised of a series of insurance schemes to respond to specific social risks linked to citizens' work life including unemployment, work related accidents, disability and retirement.

The contributory nature of these insurance programmes implies that the basic criterion defining the right to access most of the programmes managed by the National Social Security Institute or by other agencies linked to it, such as the Public Employment Service (*Servicio Público de Empleo*, SPE), is affiliation to social security via participation in the labour market during a specified period. Thus, to receive unemployment benefits, a worker must have contributed for a number of months (specific to each insurance scheme), and the benefits he/she will receive will be proportional to the duration and quantity of his/her contribution. These insurance schemes operate under a pay-as-you-go logic (not a capitalization system), so each worker contributes to a common fund from which resources are extracted to pay for the benefits that must be assumed by the system at any specific point time. Nationality

does not play a significant role in the criteria defining the right to access INSS benefits, as both Spanish citizens and foreigners with work permits and employment in the formal economy have access to these systems under equal conditions. The contributory nature of social security benefits explains the fact that immigrants' access to social insurance schemes is rarely contested in the public or political debates.

Remaining employed in the formal economy, and contributing to the social security system, are central conditions to access the benefits and subsidies administered by the INSS. The high rates of temporality among immigrants, as well as the shorter duration of their labour careers, explain the relatively low rate of unemployment benefits and subsidies coverage among these groups. Maintaining employment is key for immigrants because in many cases the renewal of work and residency permits depends on having held a job during the previous months. In this regard, entering into a situation of irregularity constitutes one of the risks threatening immigrants' entitlement to the benefits of the social insurance system. Thus, the important role played by the underground economy in the Spanish production system constitutes an important obstacle for immigrants' access to the social insurance system.

The amount and duration of unemployment benefits received by workers, both national and foreigner, are directly tied to their previous trajectory of contributions. Once the contributory benefits are exhausted, unemployed workers may receive an unemployment social assistance subsidy for a limited period, provided they comply with a series of specific requirements. Unemployment assistance protection consists, in fact, of a series of means-tested programmes, including unemployment assistance benefits,<sup>2</sup> the agrarian unemployment subsidy,<sup>3</sup> the Active Integration Income (RAI), the Professional Requalification Programme (PREPARA) and the Employment Activation Programme (PAE). These schemes have been gradually integrated into the social security unemployment protection system at various stages of the different labour market reforms implemented in Spain over the years. The result is a layering of segmented programmes with different eligibility criteria and variable duration of protection, depending on previous contributions, family responsibilities and specific social conditions (disability, being the victim of gender violence, being a returning migrant, or being over 45). These schemes are available to foreign residents with a regularized administrative situation as well, and they constitute transitory programs for situations of socio-economic distress.

Both Spaniards and foreign nationals entitled to unemployment benefits and assistance schemes need to reside in the country to have access to these benefits, and in case of establishing their residence abroad they lose their entitlements to these programs.

<sup>2</sup>Unemployed workers older than 45 access the Unemployment Assistance Benefits scheme with less demanding requirements, and they do so for a longer period. In the case of those unemployed over 52 who fulfil all the other conditions for retirement, the duration of unemployment benefits is extended until the age of retirement.

<sup>3</sup>The working of the Agrarian Unemployment Subsidy and Income Scheme is restricted to the Autonomous Communities of Andalusia and Extremadura, where it plays a very significant role in the protection of landless peasants who only find work during certain periods of the year in the tasks associated with the harvesting of specific crops.

## 27.2.2 *Health Care*

The Spanish public healthcare system initiated the convergence toward a universalistic scheme with the passing of the 14/1986 General Health Law (*Ley General de Sanidad, LGS*), which established the Spanish National Health System (*Sistema Nacional de Salud, SNS*), inspired in the British National Health Service. This move implied the decoupling of in kind healthcare services (which moved towards a universalistic scheme financed through general taxation), from sickness benefits (which remained anchored within the social security system, therefore strictly dependent on a contributory logic).

The relative lack of legislative clarity regarding the rights of foreigners implied that the extension of in kind healthcare coverage promoted by this Law and based on residence criteria initially referred only to Spaniards. Citizens of other EU countries could access the SNS through the mutual recognition of healthcare coverage within the EU, while access for immigrants remained conditioned by their links with the social security system. Healthcare coverage for immigrants was later granted by the Organic Law 4/2000 on the rights and liberties of foreigners in Spain and their integration into society (*Ley Orgánica sobre Derechos y Libertades de los Extranjeros en España y su integración social*). This regulation expanded healthcare coverage to all persons that could prove residence in Spain and lacked resources to cover for the cost of their healthcare. The mechanism chosen to link healthcare coverage with the criterion of residency was enrolment in the municipal population register and a certificate of lack of means by municipal social services. This formula prevented the use of the public healthcare system by short-term visitors to the country (tourists, etc.).

The process of gradual universalization of its coverage to reach 100% of the population residing in Spain, regardless of their nationality, wealth or administrative status, was completed in January 2012, with the implementation of the 33/2011 Public Health Law (*Ley General de Salud Pública, LGSP*). Shortly after the achievement of the complete universalization of the SNS, and justified by the crisis and the deterioration of public finances, the Royal Decree 16/2012 on "urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of its benefits", was approved in April 2012. This regulation cancelled the universal entitlement to the national healthcare system based on residence criteria. This Decree re-introduced the logic of social insurance by establishing the categories of "insured persons" (workers, pensioners, unemployed persons receiving benefits, and job seekers), and "beneficiaries" (spouses and siblings of "insured" persons younger than 26). Undocumented migrants were left out of the SNS, entitled to care only in case of emergency or infectious diseases.<sup>4</sup> Spaniards with resources not contributing to the Social Security system (who had been included in

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<sup>4</sup>With the exception of pregnant women, those affected by infectious diseases and those in need of urgent treatments. At that time it was estimated that 160,000 undocumented immigrants would lose their health card.

the SNS only in January 2012 through the Public Health Law), jobless people without benefits older than 26 (later re-introduced in the system under the condition of proving lack of means), and those unemployed without benefits who leave the country for more than 90 days, were also excluded from the SNS (Rodríguez Cabrero et al. 2018).<sup>5</sup>

Non-resident EU citizens were referred to EU cross-border healthcare regulations, so to receive treatment in the SNS they should produce a European Health Insurance Card for unforeseen medical treatment, have the authorization of their country of origin's health authority in case of planned treatment, or show a certification of lack of healthcare entitlement in the country of origin and lack of financial resources.<sup>6</sup>

This radical change in the eligibility criteria to access the SNS adopted by the central government was supposed to limit the range of coverage of the 17 Regional Health Services (SRS) composing the SNS.<sup>7</sup> The complex articulation of political and financial responsibilities in this policy area meant a substantially unequal application of the provisions adopted in that regulation: it was explicitly ignored by some autonomous governments (Andalusia and Asturias); other regions established specific programs to assist undocumented migrants without resources (Aragon, the Basque Country, the Canary Islands, Cantabria, Catalonia, Extremadura, Galicia, Navarre, and Valencia); a third group introduced some exceptions in the exclusion of undocumented immigrants from their health systems, for example, in the case of those affected by chronic diseases (Madrid, Baleares, Castilla y León, Murcia and Rioja); while a fourth group literally translated the guidelines of the decrees to their regulation, cancelling health cards issued to undocumented immigrants (Castilla-La Mancha) (Moreno Fuentes 2015).

In 2015, the Minister of Health publicly recognized the considerably negative side effects derived from the expulsion of undocumented migrants from the SNS, pointing in the direction of returning the right to primary care to undocumented immigrants, but without specifying how this measure would be applied. In July 2018, the incoming social-democratic government approved the Royal Decree 7/2018 to return to the universalistic philosophy of the SNS. The current eligibility regulation means a return to a universal entitlement to healthcare based on residence (registration in a municipality) in the country.

Access to sickness cash benefits remained firmly linked to the social security system, so eligibility to this scheme directly depends on previous contributions related to formal participation in the labour market, and may benefit both Spanish

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<sup>5</sup> In July 2016, the Constitutional Court issued a ruling cancelling these limitation (STC 139/2016), and therefore granting access to the SNS again to every Spanish and EU citizen legally residing in Spain.

<sup>6</sup> In September 2012, some 873,000 healthcare cards belonging to foreigners were cancelled.

<sup>7</sup> The SNS is as a profoundly decentralized system, made of 17 SRS run by each of the Autonomous Regions. The central government is responsible for the basic legislation on healthcare, while regional health authorities are in charge of the deployment of that basic legislation within their own territories, with a very large degree of autonomy in the way they structure their respective SRS.

nationals and foreign residents with working permits alike. This scheme aims at guaranteeing income to workers in case of illness (if they contributed for at least 180 days during the five previous years) or work related accident (no requirement of minimum period of contribution). In the event of an accident at work or an occupational disease, sickness benefits are paid from the day following the leave of work. In case of a common illness or a non-work accident, the subsidy is paid as of the fourth day of leave up to a maximum of 18 months.<sup>8</sup>

### 27.2.3 *Pensions*

Pension schemes constitute the core of the Spanish social security system, and they absorb a very significant share of the total social spending in this country. As social insurance programs, they are financed with the contributions of employers and employees. The main schemes included under this category are income maintenance programs to respond to work related accidents, disability and most notably retirement.

Access to contributory pension schemes is based on previous contributions to the system for a certain period via labor market participation. Nationality does not play any role in the definition of entitlements to receive a contributory pension. What matters is having paid social insurance contributions for the established period, although that means, of course, having held a valid work permit in the case of foreign workers. Despite the existence of a great variation in the specific circumstances that may affect workers when opting to a pension (due to their particular labour market trajectories, the sector of activity, the moment when the worker may actually retire, etc.), in 2019, the general rule established the age of retirement at 67 (or a period of contribution of at least 36 years and 9 months to retire at 65) and a minimum of 15 years of contributions.<sup>9</sup> Workers entitled to a contributory pension (regardless of their nationality), may receive their pensions abroad provided they follow the required procedures of proof of life.

The Multilateral Ibero-American Social Security Agreement (ratified by Spain as well as by Portugal, Argentina, Bolivia, Brasil, Chile, El Salvador, Ecuador, Paraguay, Peru, and Uruguay) implies that nationals of these countries may use the periods of contribution to the social security systems of any those countries for the calculation of the total number of years of contributions in order to qualify for a pension in Spain.

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<sup>8</sup>The temporary incapacity may be extended to 24 if those 6 extra months are considered necessary for the full recovery of the worker and there was no expectation of him/her having to be considered in a situation of invalidity.

<sup>9</sup>For the first 15 years of contributions, 50% of the regulatory basis is received, with an extra 0.21% for each additional month of contribution for the 163 months following, with an extra 0.19% added in the remaining months.

In recent years, and despite the crisis, the percentage of foreigners among INSS affiliates remained practically stable (between 10 and 11% of the total workforce in the case of men, and around 10% among women). Thus, foreign workers continued to help to balance the social security budget given the fact that this population is still relatively young, and is therefore a net contributor to the system, claiming relatively few benefits compared to autochthonous workers. This is particularly true regarding retirement pensions, which constitute the largest expense in the social protection system. Currently, only around 1% of the recipients of pensions in Spain are foreigners (of which more than half are EU citizens). The comparison of the demographic pyramids shows how the majorities of foreigners settled in Spain are in the age group between 20 and 50, clearly over-represented in the population of working age. Economic immigration has contributed to the rejuvenation of the Spanish workforce, constituting a net contribution to the INSS coffers, something that should continue to be the case in the next decades (Moreno Fuentes and Bruquetas-Callejo 2011).

In addition to contributory pension programs, there is also a non-contributory pensions system for persons older than 65, or for those who have a recognised disability. These means-tested schemes, providing relatively limited benefits, cover both Spanish nationals and foreigners legally residing in Spain who have not made social security contributions during the legally stipulated period, and who meet all the conditions for applying for these benefits (age or degree of recognized disability). In both cases, beneficiaries must prove that they do not have sufficient economic resources (less than €5136.6 per year in 2015)<sup>10</sup> and that they are not entitled to a contributory pension. The amount of the non-contributory pension varies according to family circumstances and the income level of the household. This system is financed through general taxation. Similarly, those Spanish nationals residing abroad beyond the age of retirement, or who cannot work due to an illness, who do not receive a contributory pension from Spain or their country of residence may apply for a means-tested non-contributory pension to the Spanish authorities. The main characteristics of these pensions are the same as non-contributory pension schemes in Spanish territory, but their amount is adjusted to the specific conditions of the country of residence of the beneficiary.

## 27.2.4 *Family Benefits*

The social expenditure devoted to families and children in Spain has traditionally been very low when compared to the rest of Europe (5.3% of total social expenditure, compared to an 8.4% average for the EU28).<sup>11</sup> The most important program in

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<sup>10</sup>The income threshold rises if the pension holder lives with a spouse and/or dependent children.

<sup>11</sup><https://www.comisionadopobrezainfantil.gob.es/es/gasto-en-familias-e-infancia-en-la-union-europea-2016-respecto-al-total-del-gasto-social>

this area is a non-contributory cash transfer scheme for low-income families with underage children (291€ a year in 2016), as well as for families with disabled children older than 18.<sup>12</sup> These benefits are targeted at families whose income in 2016 did not exceed the threshold of 11,576.83€ per year (plus 15% per additional child). This scheme is complemented by a set of one-time payments for cases of multiple birth, large families, single parents or disabled mothers, as well as a universal cash benefit/tax relief for working mothers of children aged 0–3.

The core of maternity/paternity leave benefits is based on a contributory scheme linked to pregnancy and parenthood covering the salaries of workers on leave following the birth of a child. Both Maternity (ML) and Paternity Leaves (PL) are contributory social insurance schemes financed for a short period with a high level of protection (100% of the salary). Employed mothers are entitled to 16 weeks of ML (of which up to 10 can be transferred to their partner), while employed fathers are entitled to an 12 weeks PL (to be gradually extended to 16 weeks by 2021). Since 2009, non-eligible employed mothers are also entitled to a flat-rate non-contributory maternity allowance for 42 days.

Child benefits at birth in Spain are limited to a means-tested single payment (1000€) for the birth or adoption of a child in the case of large families (with three or more children), single parent households, or handicapped mothers, as well as a scheme in the event of multiple births.<sup>13</sup> In addition to that, a means-tested child benefit scheme for low-income families,<sup>14</sup> or children with disabilities exist as well.

Although the origin of the funds to cover for these family benefits varies (child benefits for low-income families is paid with general taxes, while both ML and PL are financed through social insurance contributions), they are all run by the social security system administration. This means that the basic eligibility is determined by conditions related to the regularity of residency in the country, both of the parents and the children (regardless of their nationality), and additionally by participation in the labour market (in the case of parental leaves). Thus, the national origin of the applicant is not a key variable when determining actual eligibility, although holding a residence permit appears as a *sine qua non* condition for all of them (including the children generating the entitlement for the benefit), and actually, working legally appears as an additional requirement for parental leaves. Spanish nationals residing abroad are not entitled to any of these schemes since they do not fulfil the requirement of residency in the country.

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<sup>12</sup> 1000€ per year in the case of disability under 33%, 4414.8€ if the disability was between 65 and 75%, and 6622.8€ if the disability was over 75%.

<sup>13</sup> 3200€ in case of two children born at once, 7200€ in case of three, and 10,800€ in case of 4 or more.

<sup>14</sup> In case of a single child the threshold of family income to receive this benefit is established at 11,954€ (with 15% increase for each additional child). Since April 2019, this benefit is established at 341€ per year for the first child. A new category of severely poor has been also created (referring to families with income below 4680€ per year) which will receive 588€ per year per child instead.

### 27.2.5 *Guaranteed Minimum Resources*

There is not a basic legal framework at the central government level to define the fundamental traits of programmes to guarantee minimum resources to populations in need in Spain. The Autonomous Communities' minimum income schemes (MIS) constitute the last-resort social protection safety net in Spain, and they were created within the framework of the regions' exclusive powers on social assistance and social services. All 17 Autonomous Communities, plus the two autonomous cities of Ceuta and Melilla, have implemented their own MIS, for which they have full responsibility regarding regulation, planning, financing, implementation and evaluation. The MIS in Spain constitutes, therefore, a group of unconnected schemes, which nonetheless share certain basic features: they combine a cash transfer programme (to guarantee some minimum monetary resources) with labour market activation and/or social insertion programmes, all with a relatively low intensity of protection.

Although the design of these regional schemes has been strongly influenced by horizontal emulation and policy learning among the Autonomous Communities, there is a high degree of diversity between the different regional MIS programmes. This variability is reflected in every aspect of the design and implementation of these programmes (from delivery arrangements, to eligibility requirements, including the level of benefits). The central government tries to facilitate the exchange of information and the sharing of experiences and good practices among the Autonomous Communities.

In addition to means-tested criteria, eligibility conditions for regional MIS include age requirements, on how long the household has been living together, as well as conditions of residency and duration of registration in the municipality.<sup>15</sup> According to the 4/2000 Spanish Immigration Law, foreigners with a residence and/or working permit are entitled to the same services and benefits from social services as Spaniards, while immigrants with an irregular administrative status can only access basic services and benefits. This distinction is not based on a clear legal definition regarding the content of basic and specialised services. As a result, each Autonomous Community has resolved in its own way the issue of undocumented immigrants' access to its social services network: in some regions, requirements are flexible in order to facilitate access, in others, semi-public schemes have been established to service undocumented immigrants, often run by third-sector organisations. Although Spanish nationality is not a condition for access to MIS benefits (except in Andalusia),<sup>16</sup> a certain period of residence in the specific Autonomous Community is demanded in all programmes (Laparra 2014). Requirements vary from 6 months

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<sup>15</sup>As a consequence of this residency requirement, Spanish nationals residing abroad are not entitled to benefits from MIS.

<sup>16</sup>Article 3.3 of the 2/1999 Decree that regulates the Andalusian MIS (<http://goo.gl/V4nVOx>) establishes that non-EU third-country nationals cannot apply to this scheme.

(the Balearic Islands and Galicia) to 36 months (the Canary Islands, the Basque Country, and Valencia), with an extreme case of 5 years in the region of Murcia.

In 2008, immigrants accounted for 11.2% of the beneficiaries of Minimum Income Schemes (MIS) in Spain, showing a clear underrepresentation of this group considering that they constituted a larger proportion of the population at risk of social exclusion. The economic crisis and its severe effects on the incomes of the most vulnerable immigrant populations had increased this percentage to 27.5% by the end of 2017 (MSSSI 2017).

The intensity of protection varies quite considerably across the different regional MIS. The basic amount guaranteed for a one-person household ranges from EUR 300/month (Murcia or Ceuta) to something over double that figure (EUR 620/month in the Basque Country). This heterogeneity is also present in the case of supplements for additional household members, although, in general terms, the increases in benefits for larger households are quite modest, and certainly far removed from the scales of equivalence used in poverty measurement (in no region does a household of four members get near to double the basic amount for a single-person household: the most generous case increases that basic standard by only 60% for three additional household members).

The unequal coverage of MIS in the Autonomous Communities bears little relation to the situations of poverty, social exclusion or need in each of those regions. Many potential obstacles to actual access to those benefits are linked to institutional factors regarding the actual administration of the programmes, which are designed as comprehensive but tend towards a logic of social control, and which are poorly endowed with the human and material resources required for their functioning, leaving a wide margin for bureaucratic discretion, and the development of (subjective) morally loaded practices of behavioural control (Ayala 2014).

### 27.3 Conclusions

As a clear example of the "Mediterranean" welfare regime type, the Spanish social protection system is characterized by a combination of social insurance programs (with eligibility criteria grounded on social contributions linked to participation in the labour market), and universalist schemes (with entitlements based on residency—in some cases irrespective of administrative status). This combination of mechanisms to define access to social programs has a clear effect on the rights to access social schemes by foreigners.

The eligibility rights of Spanish nationals to the different social protection schemes when they reside abroad is also obviously affected by this state of affairs: they have an easier access to those schemes based on previous contributions (pensions), than to universalistic programs based on a logic of residency (in kind health-care services), or to social assistance schemes (MIS).

While the key variable to determine access for social insurance schemes is not nationality, but participation in the labour market (therefore strongly conditioned by

holding an authorisation to work), social protection programs based on residency may have a more selective impact depending on the nationality of the potential user.

The nature of the international agreements ratified by Spain appears as a key aspect as well in determining welfare entitlements for foreigners. This is quite obvious in the case of nationals of other EU member states, but also for nationals from Latin American countries with which the Spanish State has signed an agreement for the coordination of their social security systems.

Right before the economic crisis initiated in 2008, the Spanish welfare regime was in a process of “expansive recalibration”, aimed at increasing the salience of policies addressing new social risks through the expansion of child-care services, parental leaves, increasing support for working mothers, and developing long-term care services for dependant people (del Pino and Pavolini 2015). The fiscal consolidation measures applied after 2010 implied both a clear “welfare retrenchment”, with the significant cut of budgets allocated to most welfare programs (particularly in the domains of healthcare, education, and social services), and a “restrictive recalibration” of the system with the reduction of welfare entitlements (notably, the elimination of universality of healthcare access), the redefinition of State’s responsibilities in the domain of welfare (decreasing role of public provision of services, expansion of copayments, etc.), and the unequal impact of these measures in the different social groups.

The contributory logic of access to the social security system increased the vulnerability of immigrant populations due to the serious deterioration of their employment situation (Bruquetas Callejo and Moreno Fuentes 2015). As their limited entitlements to contributive programs were relatively fast drained, immigrants were left in a situation of severe economic and social distress. Residential vulnerability further impacted on these groups due to the financial burdens linked to increasing housing costs, leading to a quick and intense decapitalization of immigrant households.

Mediterranean welfare states that rely strongly on contributive schemes and have large informal economies offer relatively weak protection to immigrants, since these groups are most likely to work in the deregulated sector, and their rights to welfare are largely conditional upon their participation in the regular labour market. The crisis reinforced the important role of the informal economy, and this created institutional inertia hindering the access of immigrants to insurance programmes. While immigrants’ need for social protection increased as a consequence of the crisis, the actual welfare take-up by this group decreased as a result of their more limited access to the formal labor market, and more restrictive conditions of targeted programs.

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# Chapter 28

## Migrants' Access to Social Protection in Sweden



Anton Ahlén and Joakim Palme

### 28.1 Overview of the Welfare System and Main Migration Features in Sweden

#### 28.1.1 *Main Characteristics of the National Social Security System*

The Swedish welfare state is, in line with popular typologies, interchangeably referred to as the Social Democratic, the institutional, or the encompassing model of social policy, which reflects the political driving forces and its institutional characteristics (Esping-Andersen 1990; Huber et al. 1993; Korpi and Palme 1998). The Swedish welfare state is often clustered together with the other Nordic countries by reference to the Nordic model underpinned by equality-promoting principles and a political strategy of including the middle class in the social protection system in order to generate political support for generous provisions also for vulnerable groups in society. Infused by principles of universalism, the Swedish social security model builds on a comprehensive public responsibility for the welfare of the entire resident population. The model combines residence-based universal benefits with earnings-related entitlements for the economically active population. Residents have access to flat-rate basic benefits and for those in work, social insurance benefits are earnings-related (Palme et al. 2009). Securing income and joint financing of large welfare programs is dependent on high labour force participation and employment rates, as well as high taxes and social security contributions.

The Swedish welfare state is essentially individualistic, meaning that transfers, taxes, and services are normally linked to the individual rather than the household.

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Social security is funded by a combination of employer's social security contributions and taxes, and in the case of pensions, it is complemented with insured person's social security contributions. Cash benefits are administered at the central state level. The exceptions are in the areas of social assistance (*försörjningsstöd*), which is administered by the municipalities, and the voluntary state subsidised unemployment insurance (*arbetslösheftsförsäkring*), which, in line with the Ghent system, provides earnings-related benefits that are administered by independent unemployment funds. Those who do not voluntarily join an unemployment insurance fund can qualify for a basic flat rate benefit (*grundförsäkring*) (Esser et al. 2013). Benefits in kind tend to be provided on the local level by municipalities and counties with local taxes being most the important source of revenue.

Although still dominated by universal and public-funded services, since 1990, however, there has been an intensified market orientation of the Swedish welfare system, which is mainly characterised by the introduction of private service providers within the publicly funded welfare system (Palme 2015). Since 2006, taxation levels have decreased and some social security programs have been reformed or retrenched (Ferrarini et al. 2012). Recent restrictive changes imply stricter eligibility criteria for social insurance and shorter duration of sickness and unemployment benefits. Furthermore, in 2007, the insured person's contributions to the earnings-related part of the unemployment insurance were increased, leading to a significant decline in coverage of the unemployment insurance (Kjellberg 2011). Social security benefits have thus gradually become less generous, which is a continuation of a longer-term trend of falling formal replacement rates in most social insurance programs from around 90% in 1990 to around 80% today (Palme 2015).

### **28.1.2 Migration History and Key Policy Developments**

Due to population growth and famine (among other factors), approximately 1.2 million Swedes emigrated between 1850 and 1930, in particular to North America (Hammar 1985). Since then, Sweden has gradually turned into a country of immigration.<sup>1</sup> Following the economic growth after the Second World War, there was a substantive influx of labour immigrants from Nordic and other European countries during 1950–1970 (Lundh and Ohlsson 1999). In the late 1970s and 1980s, Sweden became a major receiving country of asylum seekers and resettled refugees. Immigration to Sweden has since then continuously been characterized by large-scale asylum immigration and family immigration (Byström and Frohnert 2013).

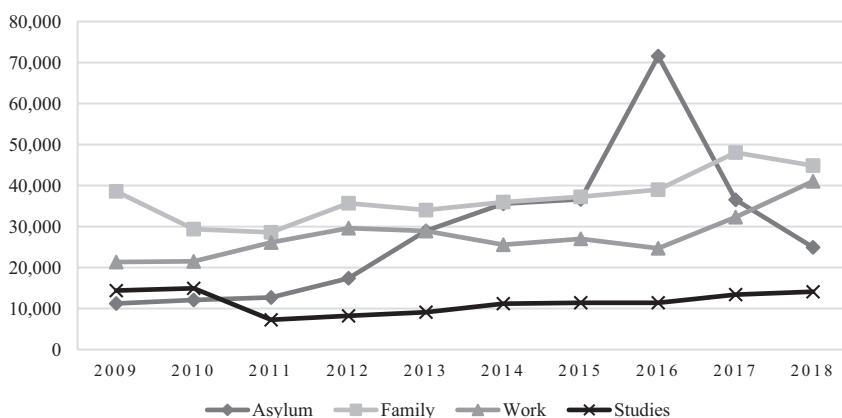
Swedish migration and integration policies have often been regarded as liberal and ambitious (Brochmann and Hagelund 2012). Building on ideas of universal welfare state egalitarianism, a right-based integration model was adopted in the

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<sup>1</sup> However, emigration from Sweden has increased since the 1960s and approximately one out of 20 Swedish citizens are residing abroad (Westling 2012).

1970s, thus promoting equal opportunities for citizens and foreigners alike (Borevi 2014; Sainsbury 2012). Since the early 1990s, Sweden has also had comparatively generous admission and settlement policies for protection seekers and family immigration. This is reflected in comparative policy data in which Sweden frequently has been ranked among the most liberal and enabling countries regarding immigration and immigrant integration policy (Helbling et al. 2017).<sup>2</sup> In addition, since the enactment of a new legislation in 2008 regarding non-European union (EU) workers, Sweden has become one of the world's most open countries for labour immigration (Calleman 2015). Following the 2008 law, labour immigration has gradually increased (see Fig. 28.1).

Political instability, conflicts and interventions around the world have affected the inflow of asylum seekers in Sweden during the 1990s and the 2000s. Large groups of refugees from former Yugoslavia arrived in Sweden in the 1990s, with a peak of 84,018 in 1992 (Lundh and Ohlsson 1999). The number of asylum seekers has increased during the 2010s, exceeding 40,000 per year from 2012 to 2017. In recent years, most refugees originated from Syria, Afghanistan, and Iraq.<sup>3</sup> Increasing immigration to Sweden in the twenty-first century has also resulted in an increase of both the number and share of the foreign-born population. By the end of 2018, the number of foreign-born residents was almost 2 million, accounting for around 19% of the population.<sup>4</sup>



**Fig. 28.1** Immigration to Sweden by first permit reason, 2009–2018. (Source: Swedish Migration Agency 2019)

<sup>2</sup> See also: Migration Integration Policy Index (2015). Barcelona/Brussels: CIDOB and MPG. <http://www.mipex.eu/>. Accessed 1 March 2019.

<sup>3</sup> Swedish Migration Agency (2019). Statistics. <https://www.migrationsverket.se/English/About-the-Migration-Agency/Statistics.html>. Accessed 1 March 2019.

<sup>4</sup> Statistics Sweden (2019). Population statistics. <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/population/population-composition/population-statistics/>. Accessed 1 March 2019.

With 163,000 asylum applicants in 2015, Sweden received – despite its relatively small population of roughly 10 million – the third highest number of asylum seekers registered in the EU (Parusel and Bengtsson 2017). The large number of new arrivals constituted a major challenge for key institutions such as the Migration Agency and the Employment Service, municipalities, and the Swedish society more broadly. To cope with these challenges, the Swedish Government introduced restrictive temporary changes in the migration legislation. Except for the introduction of border controls in 2015, the government adopted a temporary legislation in mid-2016 limiting the possibility of asylum seekers and family members to acquire permanent residence permits.<sup>5</sup> The new legislation marks a major turnaround in Swedish immigration policy (Parusel 2016). These temporary changes, in combination with international policies such as the EU-Turkey refugee agreement of 2016, have resulted in a decreasing number of asylum seekers in Sweden. While both family immigration and labour immigration have increased in recent years, the overall number of granted residence permits has dropped gradually since the peak in 2016 when 151,031 permits were issued.<sup>6</sup> Figure 28.1 shows the number of granted residence permits in Sweden between 2009 and 2018 by category of entry.

## 28.2 Migration and Social Protection in Sweden

As equal rights to social security is a fundamental feature of the Swedish welfare state, nationality or immigration status of a person do not affect the entitlements to social security benefits. Rights are based on either residence or work in Sweden. The residence-based access to social protection entails that any individual who resides and can be expected to reside in the country for at least 1 year is considered a resident, regardless of his/her nationality and type of residence permit. The one-year criterion of the applicant's intention to stay in Sweden is assessed by the Swedish Social Insurance Agency (*Försäkringskassan*) and takes into consideration factors such as the individual's interest of staying in Sweden and the real domicile. As far as work-related social security is concerned, no differences are normally made on the basis of nationality or type of residence permit.

More recently, especially against the backdrop of the so-called migration crisis in 2015–2016, the political debate in Sweden has to some degree drifted, with some parties increasingly addressing the urgency to restrict newcomers' and immigrants' access to various social benefits. The rapid increase of asylum seekers in 2015 also prompt the Swedish Government to introduce restrictive temporary changes in the

<sup>5</sup> Swedish Migration Agency (2018). Limited possibilities of being granted a residence permit in Sweden. <https://www.migrationsverket.se/English/About-the-Migration-Agency/Legislative-changes-2016/Limited-possibilities-of-being-granted-a-residence-permit-in-Sweden.html>. Accessed 1 March 2019.

<sup>6</sup> Swedish Migration Agency (2019). Statistics. <https://www.migrationsverket.se/English/About-the-Migration-Agency/Statistics.html>. Accessed 1 March 2019.

migration legislation, including border controls, more restrictive rules for residence, and a maintenance requirement for the acquisition of permanent residence and for family reunification.<sup>7</sup> There have however been no changes when it comes to access to benefits.

Since various social rights generally are based either on residence or on work in Sweden, only a share of the benefits accounted for in this chapter are accessible for Swedish nationals residing abroad. Certain benefits, mainly earnings-related, are exportable to both EU and non-EU countries, such as earnings-related sickness and activity compensations and earnings-related old-age pensions, whereas others are only exportable to countries within the EU/European Economic Area (EEA) or Switzerland, such as the guaranteed old-age benefit and the guaranteed flat-rate benefit for invalidity.

### 28.2.1 *Unemployment*

The Swedish unemployment insurance system consists of two schemes: a state-subsidised voluntary insurance to compensate for the loss of income (*inkomstbortfallsförsäkring*), providing earnings-related benefits financed by contributions from employers and insured individuals; and a basic insurance (*grundförsäkring*) financed by employers' contributions and providing a flat-rate benefit for those who are not voluntarily insured but fulfil the work (and other) criteria.

To be entitled to unemployment benefits (both the earnings-related insurance and the basic allowance) applicants are required to register as jobseekers at the public employment office; to be capable of working for at least 3 h each working day and an average of at least 17 h per week; to be below the age of 65; and to be otherwise available to the labour market.<sup>8</sup> The earnings-related benefit is paid to unemployed individuals who have been a member of an unemployment insurance fund (*arbetsslöshetskassa*) for at least 12 consecutive months. Entitlement to the basic allowance requires that the individual is not eligible for the earnings-related benefit, either by not satisfying the membership condition or by not being a member of an unemployment fund. The qualifying period for both benefits is to have been employed or self-employed for at least 6 months and at least 80 h of work per month during the last 12 months or, to have been employed or self-employed for at least 480 h during a consecutive period of 6 months with at least 50 h of work every month during the last 12 months. Calculations of the earnings-related benefit are determined by previous income and the duration of unemployment. The benefit is paid at 80% of the reference income during 200 days and thereafter at 70% during

<sup>7</sup>Swedish Migration Agency (2018). Limited possibilities of being granted a residence permit in Sweden. <https://www.migrationsverket.se/English/About-the-Migration-Agency/Legislative-changes-2016/Limited-possibilities-of-being-granted-a-residence-permit-in-Sweden.html>. Accessed 1 March 2019.

<sup>8</sup>SFS 1997:238.

100 days.<sup>9</sup> The benefit ceiling is set at 910 Swedish Krona (SEK) (€94) per day for the first 100 days and maximum SEK 760 (€78) for the remaining days. The flat-rate basic allowance is set at SEK 365 (€38) per day. Both benefits can be granted for 300 days (extended to applicants who have a child).<sup>10</sup>

Apart from the requirement of having a fixed domicile in Sweden, there are no specific requirements for EU and non-EU foreign residents to be eligible for unemployment insurance. As unemployment benefits counts as a regular work-related income, receiving unemployment provision is not a formal obstacle for applying for family reunification according to the maintenance requirement. Recipients of unemployment benefits are allowed to leave the country temporarily without losing their benefit, but only to apply for employment in another EU/EEA country or Switzerland. The benefits cannot be granted if the recipient moves permanently to another country.

## 28.2.2 *Health Care*

Public healthcare in Sweden is universal and covers all residing inhabitants. Hence, EU and non-EU foreigners holding a valid residence permit have access to public healthcare under the same conditions as Swedish nationals. Swedish nationals residing abroad are not eligible for the benefits-in-kind system,<sup>11</sup> except for those temporarily residing in other EU countries who are covered by the European Health Insurance Card. The public healthcare system is tax-funded and administrated by the counties (*Landsting*). The benefits-in-kind system implies that the patient pays user charges to cover part of the cost for medical care and hospitalisation himself/herself (children under 18 are exempt).

The system of sickness cash benefits is earnings-related and covers employees and self-employed. For employees, the employers pay sick pay from the 2nd up to the 14th day of illness and the Social Insurance Agency pay sickness cash benefits (*sjukpenning*) as from the 15th day. Self-employed and unemployed registered with the Swedish Public Employment Service (*Arbetsförmedlingen*) as jobseekers can only receive sickness cash benefit, but not sick pay (*sjuklön*). There is no qualifying period of insurance or prior residence to become eligible to claim sickness benefits. Neither is there a general time limit of benefit duration. If the illness continues after 364 days, the insured individual can apply for extended sickness cash benefit (*sjukpenning på fortsättningsnivå*) with a reduction in the benefit received. If the insured

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<sup>9</sup>SFS 1997:238.

<sup>10</sup>European Commission (2018). *Mutual information system on social protection, MISSOC*. MISSOC comparative tables database. <https://www.missoc.org/missoc-database/comparative-tables/> Accessed 1 March 2019.

<sup>11</sup>SFS 2017:30.

individual has a serious illness, he/she can apply for continued sickness cash benefit.<sup>12</sup>

Invalidity benefits in Sweden are divided into two systems: an earnings-related sickness/activity compensation (*inkomstrelaterad sjukersättning/aktivitetsersättning*) financed by contributions paid by employees and self-employed; and a tax financed guaranteed compensation (*garantiersättning*) for all residents with low or no earnings-related sickness compensation or activity compensation. Invalidity benefits are paid to individuals with fully or partially reduced work capacity. If the person has a partial disability, a reduced benefit is paid at ¾, ½ or ¼ of the full benefit according to the degree of disability. At least three years of residence in Sweden are required to become eligible to claim guaranteed compensation and at least 1 year with pensionable income is required to access the earnings-related compensation.<sup>13</sup>

The systems of cash sickness and invalidity benefits are equal to citizens and non-citizens alike. EU citizens with a right of residence (*uppehållsrätt*) in Sweden can access these benefits under the same conditions as national residents. A non-EU foreigner must have a residence permit valid for at least 1 year and must be considered, on a case-by-case basis, to intend to reside in Sweden for at least a year to be eligible for sickness and invalidity benefits. Cash benefits in case of sickness are not exportable to nationals who decide to reside permanently abroad. Swedish nationals receiving the earnings-related sickness/activity compensation are allowed to keep this benefit under the same conditions when deciding to permanently move abroad. Individuals' receiving the guaranteed compensation are only allowed to export the benefit when permanently moving to an EU/EEA country or Switzerland.

### 28.2.3 *Pensions*

The public old-age pension system (*ålderspension*) is a compulsory and universal scheme consisting of different components. The first tier includes the income-related pension (*inkomstpension*) based on two types of benefits; (1) a notional defined contribution system (NDC) and (2) a fully funded premium reserve pension (*premiepension*) following the defined contribution principle with individual accounts. The second tier is the tax financed guarantee pension (*garantipension*) granting a guaranteed level for all (permanent) residents and a supplement for those with very low income-related pensions (Esser et al. 2013).

Even if there is no minimum period for enrolment in the Swedish pensions system as a contributor/insured person, in reality, it takes a long time to qualify for a full guarantee pension or an adequate income pension. Three years of pensionable income are required for the income-related pension and 3 years of residence in

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<sup>12</sup>SFS 2010:110, section C.

<sup>13</sup>SFS 2010:110, section C.

Sweden are required for the guarantee pension. The retirement age is flexible from 61 for the income-related pensions and payable from 65 years for the guarantee pension. The size of the income-related pension is determined based upon life-time earnings (including social insurance benefits), age at retirement, cohort life expectancy, and the development of the economy. The guarantee pension depends on the duration of residence in Sweden (up to 40 years) and the amount of earnings-related pensions. Migrants who do not fulfil the requirements for the guaranteed pension are entitled to claim a maintenance support for the elderly (*äldreförsörjningsstöd*) above the age of 65. The maintenance support is means tested and establishes a reasonable standard of living after housing costs are paid.<sup>14</sup>

There are no additional requirements to become eligible for old-age related benefits for foreigners residing in Sweden. Individuals are allowed to keep the income-related pension indefinitely, regardless of which country they move to. Individuals are also allowed to keep the guarantee pension if they leave the country temporarily. However, a beneficiary of the guarantee pension may only keep the benefit if he/she resides in another country in the EU/EEA and Switzerland.

#### 28.2.4 Family Benefits

Family-related social protection in Sweden is defined as child benefits and parental benefits. The child benefits system is a compulsory and universal scheme covering all resident parents and children. The system is tax financed and provides a flat-rate child allowance (*barnbidrag*) and a large family supplement (*flerbarnstillägg*). Child benefits are paid from the month after the birth of the child until the age of 16 (for those who reach 16 and are still in compulsory education, an extended child allowance (*förlängt barnbidrag*) is paid).<sup>15</sup>

The scheme of parental benefits includes a tax financed benefits in kind health service for all residents and a compulsory cash benefits system of parental insurance (*föräldraförsäkring*) with earnings-related and flat-rate benefits. The benefits in kind system include free maternity services and hospital care according to the public healthcare system. The main condition for access to health care is residence in Sweden. The cash benefits parental insurance includes the pregnancy cash benefit (*graviditetspenning*) and the parental benefit (*föräldrapenning*). The first one is payable during the period of leave between the 60th day before confinement and the 11th day before confinement; whereas the second one is payable for a total of 480 days per child. For children born after 2016, 90 of these days are reserved to each parent (so called mother's quota and father's quota), while the remaining days can be transferred between the parents. In addition, fathers are entitled to 10 benefit

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<sup>14</sup> SFS 2010:110, section E.

<sup>15</sup> SFS 2010:110, section B.

days in connection with childbirth.<sup>16</sup> The minimum guaranteed parental benefit (*grundbelopp*) is paid for 390 of the 480 days according to the sickness cash benefit rate, the minimum being SEK 250 (€26) per day. The remaining 90 days are paid at SEK 180 (€19) per day. To receive parental benefit above SEK 250 (€26) per day, the parent must have been insured for sickness cash benefit above SEK 250 (€26) for at least 240 consecutive days before confinement. This requirement applies for the first 180 days of receiving the benefit and the remaining days are paid at either at sickness benefit level or at a flat rate.<sup>17</sup>

EU citizens with a right of residence in Sweden can access family-related benefits under the same conditions as national residents. Non-EU nationals must have a residence permit that is valid for at least one year and must be considered, on a case-by-case basis, to intend to reside in Sweden for at least a year. A new regulation entered into force in July 2017 preventing parents migrating to Sweden from receiving parental benefits retroactively for children over 1 year. To receive child benefits, the child must be residing in Sweden. If the child leaves Sweden for less than 6 months, the child allowance is still paid. This limit does not apply if the country of destination is an EU/EEA country or Switzerland. Parental benefits can be retained only by non-residents who are insured in Sweden and the child lives in an EU/EEA country or Switzerland.<sup>18</sup>

### 28.2.5 *Guaranteed Minimum Resources*

Social assistance (*försörjningsstöd/ekonomiskt bistånd*) is the only benefit in Sweden that could qualify as a minimum income scheme. All legal residents are entitled to social assistance to guarantee a reasonable standard of living. The benefit is means-tested and administered by the municipalities. Social assistance is provided as a last resort (safety net). As a general rule, all real property, removable assets, and incomes, regardless of the nature and origin, are taken into account and deducted from the amount of social assistance. As long as the claimant is able to work, he/she must be available to the labour market at all times. Moreover, claimants might also be required to take part in work experience or other skill-enhancing activities organised by the municipality. As the basic rule is that recipients of social assistance should be residing in Sweden and available to the labour market, the possibility of exporting the benefit is normally not allowed. However, the decision on social assistance is always preceded by an individual evaluation and may vary between responsible committees and municipalities.<sup>19</sup>

<sup>16</sup>SFS 2010:110, section B.

<sup>17</sup>SFS 2010:110, section B.

<sup>18</sup>SFS 2010:110, section B.

<sup>19</sup>SFS 2001:453.

Foreigners are required to have a fixed domicile in Sweden to receive social assistance. The basic rule for EU citizens is to have sufficient means to support themselves and their family members in order to acquire the right of residence in Sweden. Accordingly, claiming social assistance can affect their right of residence, although the decision is made on a case-by-case basis involving individual assessment. Non-EU foreigners must have a residence permit valid for at least one year and must be considered, on a case-by-case basis, to intend to reside in Sweden for at least a year to be eligible for the benefit. Claiming or receiving social assistance do not affect EU and non-EU foreigners' access to citizenship.<sup>20</sup>

Since 2010, newly arrived migrants that are beneficiaries of protection can apply for an introduction benefit administered by the Swedish Public Employment Service. This benefit requires migrants to participate in certain labour market programmes and is paid instead of social assistance if the migrant is eligible for the introduction benefit.<sup>21</sup> According to a temporary law introduced in 2016, beneficiaries of temporary residence permits are required to have a work-related income (pay from work, unemployment benefit, sickness benefit) to be granted a permanent residence permit. This is however only required in order to obtain a permanent residence permit, not for the extension of a temporary residence permit. In addition, the law also includes a maintenance requirement for family reunification, which requires a regular work-related income (including pay from work, unemployment benefit, sickness benefit, and earnings-related retirement pension).<sup>22</sup> Hence, according to the maintenance requirement, non-EU foreigners receiving social assistance are in essence not eligible for family reunification.

### ***28.2.6 Obstacles and International Agreements***

The basic feature of equal rights to social security in Sweden is reflected by the few differences in entitlements and rights for potential beneficiaries. Thus, the guiding principle of the Swedish welfare system is that non-citizens should not be subjected to separate rules on the basis of their nationality or immigrant status (Sainsbury 2012). Instead, rights to social security are normally based on either residence or work in Sweden. Accordingly, there are no general differences between citizens and non-citizens when it comes to the right of retrieving social benefits that are exportable to other countries. As previously outlined, however, only a share of the benefits accounted for in this chapter are accessible for foreigners or citizens residing abroad, some of which do not include any limitations (i.e. the income-related sickness/activity compensation; the earnings-related old-age pension and the premium reserve

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<sup>20</sup>SFS 2001:453.

<sup>21</sup>SFS 2010:197.

<sup>22</sup>SFS 2016:752.

pension), whereas others are only exportable to EU/EEA countries or Switzerland (i.e. the guaranteed compensation for invalidity and the guaranteed old-age benefit).

Apart from the residence and work-related criteria, there are no specific obstacles or sanctions for accessing social protection benefits for foreigners residing in Sweden. However, the temporary law adopted in 2016 limits asylum seekers' possibilities of being granted residence permits and the possibility of family reunification for beneficiaries of temporary residence permits.<sup>23</sup> Among other restrictions, this new law also stipulates that the standard residence permit granted beneficiaries of protection should be time-limited to 13 months. Although this policy does not formally obstruct individuals with temporary residence permits to access social benefits, it arguably constrains their possibilities to meet the one-year residence-based condition attached to various welfare benefits. The law also includes a maintenance requirement for family reunification requiring regular work-related income that should match a so-called 'standard amount'. Thus, in practice, the maintenance requirement restricts, in most cases, the possibility of family reunification for beneficiaries with temporary residence permits who receives income-support in the form of social assistance.

In terms of international agreements, among the three countries whose nationals represent the largest groups of non-EU foreigners residing in Sweden, bilateral social security agreements have been concluded with Bosnia-Herzegovina and Turkey, but not Iran. The agreement with Bosnia-Herzegovina covers health care, pensions, and family benefits<sup>24</sup> and it entails that citizens of Bosnia-Herzegovina residing in Sweden are covered by the public health service and sickness insurance in accordance with Swedish law. They are also entitled, under equal conditions, to public contributory and non-contributory pensions. Childcare allowance, according to Swedish law, is given to citizens of Bosnia-Herzegovina if they have resided in Sweden for at least 6 months. The bilateral agreement with Turkey covers unemployment benefits, health care, pensions, and family benefits.<sup>25</sup> Turkish nationals residing in Sweden are entitled, under equal conditions, to benefits in kind in case of sickness. Income-related pensions may not be reduced, modified, suspended or withdrawn on account of a Turkish recipient residing in Sweden. However, this does not apply to the guarantee pensions. The agreement moreover entails that parental insurance acquired in both countries shall be added together for the acquisition of rights to the benefit. Turkish citizens residing in Sweden shall receive medical benefits, and also maternity and childbirth benefits, in accordance with Swedish legislation.

Among the three non-EU countries that represent the largest destinations of Swedish citizens, bilateral agreements have been concluded with the United States and Canada, but not with Australia. The agreement between Sweden and the United

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<sup>23</sup> SFS 2016:752.

<sup>24</sup> Förordning 1978:798.

<sup>25</sup> SFS 2005:234.

States covers health care and pensions.<sup>26</sup> It stipulates that a Swedish citizen shall, if eligible, be covered by sickness or activity compensation under US laws. Regarding pensions, it also entails that the US agency shall, under certain conditions, take into account periods of coverage that are credited under Swedish laws on income-related pension when establishing the entitlement to old-age benefits for Swedish citizens residing in the US. The bilateral agreement with Canada also covers health care and pensions<sup>27</sup> and for both insurance schemes, it entails that benefits acquired by Swedish citizens in Sweden shall not be subject to any reduction, modification, suspension, cancellation or confiscation if the person resides in Canada (this does not apply to the guarantee pension).

### 28.3 Conclusions

The Swedish welfare state is in principle universal and encompassing, providing all residents with an extensive system of benefits from the cradle to the grave. The social protection system combines residence-based universal benefits with earnings-related entitlements for the economically active population. Thus, residents have access to flat-rate basic social insurance benefits and for those in work, earnings-related benefits are tied to the level of wages (Palme et al. 2009). The evolution of the Swedish welfare state since 1990, however, has been characterised by intensified market orientation of welfare services, tax cuts, and various changes in the welfare state programs. Consequently, it has been argued that social security benefits, to some extent, have been drifting away from the core principles of an encompassing model where also the middle class is adequately covered by the model of social protection (Ferrarini et al. 2012; Palme 2015). Changes in the Swedish social security system have also included restricting the qualifying conditions for social insurance benefits (sickness, unemployment insurance) and further limiting their duration. However, a number of these changes have been reversed by the Red-Green government in power since 2014.

A cornerstone of the Swedish social protection model is that foreigners should not be subject to any specific rules only affecting them as a group on the basis of their nationality or immigrant status (Sainsbury 2012). Instead, rights are based either on residence or work in Sweden. The residence-based access to social protection entails that any individuals who reside and can be expected to reside in Sweden for at least 1 year are considered residents, regardless of nationality and type of resident permit. As far as work-related social security is concerned, no differences are normally made on the basis of nationality or type of residence permit. Since 2010, newly arrived migrants that have been granted residence for protection and subsidiary protection reason may apply for an introduction benefit, which is paid instead

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<sup>26</sup>SFS 2004:1192.

<sup>27</sup>SFS 2002:221.

of social assistance if the migrant meets the necessary conditions. A new regulation from 2017 prevents parents migrating to Sweden from receiving parental benefits retroactively for children over 1 year.

Perhaps the most important policy change as regards to immigrants' access to social benefits concerns a new temporary law adopted by the Swedish Parliament in June 2016, which limits asylum seekers' possibilities of being granted permanent residence permits. The present government has made a deal in Parliament to prolong this temporary legislation 2 years beyond June 2019. Although it does not formally obstruct individuals with temporary residence permits to access social benefits, the law entails that a holder of such permit should have work-related income (pay from work, unemployment benefit, sickness benefit) to be granted a permanent residence permit. The law also includes a maintenance requirement for family reunification requiring a regular work-related income which, in practice, can affect the possibility of family reunification for beneficiaries of temporary residence permits who receives social assistance.

While the current Government still emphasizes the right to asylum and the potential gains of cross-border mobility,<sup>28</sup> the restrictive policy reforms of 2015 and 2016, including border checks and the temporary legislation, constitutes a major shift in Swedish immigration policy. The reforms explicitly aimed to reduce the influx of asylum seekers in order to cope with the challenges following the large reception of asylum applications in 2015–2016. Even though the number of asylum seekers in Sweden has decreased drastically since 2015, concerns over immigration have continued to be at the centre of political debates. In the 2018 national election, the radical right party the Sweden Democrats (*Sverigedemokraterna*) won 17.6% of the votes making it the third largest party. Reflecting this tension, the availability of Swedish social benefits has been discussed both as a means of attracting migrants and in respect of the capacity of the system to cope with the large influx of newcomers. Accordingly, some parties have put forward policy suggestions aiming to restrict or further condition newly arrived migrants' entitlement to social benefits. The two largest opposition parties in the Swedish parliament, the Moderate Party (*Moderata Samlingspartiet*) and the Sweden Democrats, have raised the most explicit propositions. The Moderate Party has proposed limited subsidies and welfare provisions for new immigrants, including qualifying conditions in terms of language and work-based requirements to benefit from parental insurance, social assistance, and guaranteed pension. The party has also suggested that social assistance should not be granted EU foreigners residing in Sweden who neither work nor study (Kinberg Batra et al. 2017). Except drastically reducing immigration to Sweden, the Sweden Democrats also proposed that social protection should be limited for foreigners and conditional on work and language-related achievements.<sup>29</sup> However, these

<sup>28</sup> Government Offices of Sweden (2017). Migration and asylum policy objectives. <https://www.government.se/government-policy/migration-and-asylum/objectives/>. Accessed 1 March 2019.

<sup>29</sup> Sverigedemokraterna (2018). Sverigedemokraternas hösbudget 2018. <https://sd.se/wp-content/uploads/2017/10/H%C3%B6sbudget-2018.pdf>. Accessed 1 March 2019.

propositions have not yet had any impacts when it comes to immigrants' access to social benefits in Sweden.

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